

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 DRY CREEK COALITION and FUTUREWISE,

4 Petitioners,

5
6 v.

7 CLALLAM COUNTY,

8
9 Respondent.

Case No. 07-2-0018c

FINAL DECISION AND ORDER

10
11 **I. SYNOPSIS**

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13 In this Order the Board finds that, while Clallam County is entitled to allow uses consistent
14 with the uses that existed in areas contained within a Limited Area of More Intense
15 Development (LAMIRD), those uses must be consistent with the areas and uses as of July
16 1, 1990. Because the County’s conditional use provisions allow a potentially broader range
17 of uses within its LAMIRDs, those provisions are non-compliant.
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20 With regard to the County’s method for establishing LAMIRDs, the County cannot rely on
21 RCW 36.70A.070(5)(a) as an “independent legal basis” for LAMIRDs that contravene
22 established GMA criteria. However, even where a basis for establishing the logical outer
23 boundary (LOB) was pre-existing zoning boundaries, LAMIRDs that also meet the criteria of
24 the GMA will be found compliant.
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26 The Board also finds in this Order that nothing in the Growth Management Act (GMA)
27 expressly prohibits a county from reconsidering the boundaries of a LAMIRD or establishing
28 a LAMIRD at a later date. The only condition the Legislature chose to impose is that the
29 boundaries of a LAMIRD meet the applicable requirements.
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1 In reviewing the particular LAMIRDs challenged in this appeal, the Board finds the following
2 LAMIRDs to be in compliance with the GMA: Diamond Point; Sappho; Old Beaver; Maxfield;
3 Quillayute Airport; The Bluffs; Hoko River West; Straits; and Camp Hayden.

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5 The Board finds the following LAMIRDs to be out of compliance, in whole or in part, with the
6 GMA: SW Carlsborg; Dungeness Village; East Anderson; Lotzgesell; Dryke/Sherbourne
7 Road; Laird's Corner; Deer Park; Lake Farm; Bear Creek; Whitcomb/Dimmel; Bogachiel
8 Bridge; Three Rivers; Quillayute River; Quillayute Prairie; Little Quillayute Prairie; O'Brien;
9 Crescent Beach; Lyre River; Bullman; and Snider.

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11 On the issue of rural densities, the Board finds that with such a large percentage of the
12 County's existing land use pattern at a parcel size of 4.81 acres and farms within the County
13 averaging 25 acres, the existing rural landscape and the rural character of Clallam County is
14 a rural density of one dwelling unit per five acres (1 du/5 acre). By authorizing densities that
15 do not reflect the existing landscape or economy of the area, the County has failed to
16 maintain the traditional rural lifestyles of the residents of Clallam County as required by the
17 GMA.
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19
20 On the issue of urban densities, the Board concludes that the County's zoning districts
21 within the Sequim and Port Angeles UGAs which provide for a maximum residential density
22 of two dwelling units per acre (2 du/acre) violates the GMA. The failure to have urban
23 services available at the time of development, the presence of essential public facilities, and
24 the existence of sprawling, low-density development are not sufficient justification for such a
25 non-urban density.
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28 With regard to extending urban services outside of UGAs, the Board finds in this order that
29 CCC 31.02.285 (4)(b)(Policy 7) complies with the GMA.
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31 On the issue of the County's failure to provide for sewer service and other needed capital
32 facilities and services to the Carlsborg Urban Growth Area (UGA) in Section 20(C), and
failure to review and revise the Comprehensive Plan (CP) to plan for sewer service to the

1 Carlsborg UGA, the Board finds that the County has not adopted a capital facilities plan
2 compliant with the provisions of the GMA for providing sewers. The County cannot provide
3 sewer service to enable urban development at the time of development. Therefore, the
4 Carlsborg UGA is non-compliant with the GMA. The Board concludes that Futurewise has
5 not carried its burden of proof in regard to stormwater or parks facilities. However, the Board
6 finds that the County's CFP for police services does not comply with the GMA.
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8 Regarding the challenge to the Sequim-Dungeness Regional Plan, Futurewise's challenge
9 to CCC 31.02.275 fails. Except as applied to Blyn, the Board finds the provisions of CCC
10 31.03.270 regarding the Rural Center zone comply with the GMA. As to Blyn, it has not
11 been designated as a UGA or a LAMIRD and therefore the allowance of urban uses and
12 more intense rural uses in this area is clearly erroneous.
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15 The Board finds that the County's failure to require appropriate rural densities, the
16 allowance on non-urban densities in the Sequim and Port Angeles UGAs, the failure to have
17 in place an adequate Capital Facilities Plan for the Carlsborg UGA, and the allowance of
18 urban uses or more intense uses in Blyn, warrant a finding of invalidity.
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20 The Board was not able to reach agreement on the issues pertaining to accessory dwelling
21 units or UGA sizing.
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23 **II. PROCEDURAL HISTORY**

24
25 On October 3, 2007 Futurewise filed a timely Petition for Review (PFR) seeking this Board's
26 review of Ordinance No. 827 and Resolution No. 77, 2007. This appeal was assigned Case
27 No. 07-2-0015. On October 10, 2007 Futurewise filed a First Amended Petition for Review.
28 On October 26, 2007 Dry Creek Coalition (Dry Creek) filed a timely PFR also seeking this
29 Board's review of Ordinance No. 827 and Resolution No. 77, 2007. This appeal was
30 assigned Case No. 07-2-0018.
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1 On November 2, 2007, the Board issued an Order of Consolidation, consolidating the two
2 PFRs. The matter was captioned *Dry Creek Coalition and Futurewise v. Clallam County*,
3 WWGMHB Case No. 07-2-0018c.

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5 On November 26, 2007, the Board received the County's Index of Public Records (Index).

6
7 On November 30, 2007, the Board received Futurewise's Restatement of the Issues and on
8 December 5, 2007, the Board received Dry Creek's Restatement of the Issues.

9
10 On December 3, 2007, the Board received, from both Petitioners, their Additions to the
11 Index. The County, on December 7, 2007, objected to Petitioners' proposed additions.

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13 On December 10, 2007, the County filed an Amended Index to the Record (Amended
14 Index).

15
16 On December 19, 2007 the County filed a Motion to Dismiss Futurewise's Issue Two as
17 Untimely (County Motion to Dismiss (ADUs)). This motion was denied by the Board on
18 January 10, 2008.¹

19
20 Also on December 19, 2007, Futurewise filed a Motion to Correct or Supplement the Record
21 (Futurewise Motion to Supplement). This motion was granted by the Board on January 7,
22 2008.

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24 On December 28, 2007, the County filed a Second Amended Index to the Record (2nd
25 Amended Index).

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27 On January 18, 2008, the County filed a Third Amended Index to the Record (3rd Amended
28 Index).²

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¹ Order Denying County's Motion to Dismiss Issue 2 (ADUs).

² For the purpose of this proceeding, the 3rd Amended Index represents the Index to the Record and is controlling as to the exhibits and evidence available to the parties.

1 During February and March 2008, the parties filed timely prehearing briefing, noted as
2 follows and as used throughout this Order:

- 3
- 4 • Futurewise’s Prehearing Brief (**Futurewise HOM Brief**). Eight exhibits were
5 attached to this briefing.
- 6 • Dry Creek’s Opening Brief (**Dry Creek HOM Brief**). Eight exhibits were attached to
7 this briefing.
- 8 • Clallam County’s Response Brief (**County Response**) and Motion to Supplement the
9 Record. Twenty-three exhibits were attached to this briefing.³ Also in conjunction
10 with its Response Brief, the County filed a Motion to Dismiss Futurewise Issue 7
11 (County Motion to Dismiss (UGA Boundaries)).⁴
- 12 • Futurewise’s Reply Brief and Opposition to Motion to Supplement the Record
13 (**Futurewise Reply**). Two exhibits were attached to this briefing.
- 14 • Dry Creek’s Reply Brief (**Dry Creek Reply**). Two exhibits were attached to this
15 briefing.

16 A Hearing on the Merits was conducted on March 11, 2008 in Port Angeles, Washington.
17 Dry Creek was represented by Gerald Steel. Futurewise was represented by Keith Skully.
18 The County was represented by Ann Gygi and Brian Free. Board members Holly Gadbow
19 and James McNamara attended, with Board Member McNamara presiding Also presented
20 at the hearing was Stephen Gray, Planning Manager for Clallam County.

21 At the Hearing on the Merits, the Board permitted the County to provide a written response
22 to certain questions posed by the Board. On March 24, 2008, Clallam County filed its
23 Response to Board Questions (County Post-Hearing Response). Two exhibits were
24 attached to this briefing.

25 III. PRELIMINARY MATTERS

26 Motions to Supplement

- 27 • Clallam County
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31 ³ Included in the exhibits attached to the County’s Response Brief were documents which the County sought to
32 supplement the record with. The inclusion of these exhibits in the Record for this matter are address *infra*, at
Section IV – Preliminary Matters.

⁴ The resolution of this motion is addressed within the Board’s discussion of the Legal Issue it pertains to.

1 On February 22, 2008, Clallam County filed a Motion to Allow Supplemental Evidence
2 (County Motion to Supplement). With this motion, the County seeks submittal of two
3 documents it asserted were needed to provide factual background.

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5 The first document is a June 20, 2001 memorandum from Clallam County Planning Biologist
6 Joel Freudenthal to the Board of Clallam County Commissioners [BOCC] (Freudenthal
7 Memo). The Freudenthal memo provides the author's perspective on riparian/stream
8 habitat management in regards to the developed landscape as it relates to the GMA.⁵ Also
9 included with Exhibit A is a June 4, 2001 memorandum from Bruce Emery, Associate
10 Planner, to the BOCC in regards to critical areas and shorelines and, a May 31, 2001
11 memorandum from both Freudenthal and Emery to the BOCC in regards to agricultural uses
12 and best management practices within critical areas. The County contends that this/these
13 documents, which summarize numerous studies regarding total impervious surface within
14 critical areas, is necessary to provide context to the County's planning decisions.⁶ At the
15 HOM, neither party objected to the submittal of the Freudenthal Memo. **The Board grants**
16 **the County's Motion to Supplement the Record with the Freudenthal Memo and the**
17 **related attachment; it shall be referenced as HOM Exhibit 1.**
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21 The second document is a February 22, 2008,⁷ declaration of Steven Gray, Planning
22 Manager for the County (Gray Declaration). The Gray Declaration, provides the
23 qualifications of Mr. Gray, notes that the research and analysis summarized in the
24 Freudenthal Memo was reviewed and analyzed during the County's CAO update process;
25 provides for clarification in regard to the calculation of vacant buildable land in the County's
26 analysis; and notes that the Blyn Rural Center is owned in significant part by the Jamestown
27 S'Klallam Tribe, limiting the County's planning authority. The County asserts that this
28 document is needed to introduce the Freudenthal Memo, provide statistical clarification, and
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32 ⁵ County Motion to Supplement, Exhibit A.

⁶ County Motion to Supplement, at 2.

⁷ Although the County's Motion to Supplement states the declaration is dated February 22, 2008, the declaration provided to the Board was undated.

1 provide background regarding the Blyn Rural Center.⁸ At the HOM, both Petitioners
2 objected to the submittal of the Gray Declaration, asserting that it was prepared subsequent
3 to the adoption of the challenged action and to the Petitioners' Opening Brief and, that its
4 contents, with the except of the vacant lands calculation, is irrelevant to the instant matter.⁹
5

6 The Board finds that although Mr. Gray's thoughts and impressions portrayed in the
7 declaration were probably before the BOCC during the adoption process, the Gray
8 Declaration was prepared months after the adoption of the challenged action in direct
9 response to the matter pending before the Board and, the Board does not find that it is
10 necessary for the purposes the County asserts in its Motion. **The Board DENIES the**
11 **County's Motion to Supplement the Record with the Gray Declaration.**
12

- 13
- 14 • Dry Creek

15 Attached to Dry Creek's Reply Brief are two attachments – the first being a copy of ESHB
16 2905 and the second being a copy of the Final Bill Report pertaining to this enactment.
17 ESHB amended RCW 36.70A.070, adding certain provisions in regards to LAMIRDs, which
18 became effective in June 2004.
19

20 Dry Creek did not identify these attachments as part of the Record for this matter nor has
21 Dry Creek sought supplementation. Rather, from its briefing, it appears Dry Creek relies on
22 these documents to counter claims raised in the County's brief, specifically a February 23,
23 2004 Senate Bill Report, which the County cited to in a footnote but, like Dry Creek, failed to
24 seek supplementation.¹⁰
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26 Pursuant to WAC 242-02-660(2), the Board has authority to take official notice of
27 Washington State laws, including legislative committee reports. However, this authority
28 does not eliminate the parties' responsibility to request that the Board take such action and
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32 ⁸ County Motion to Supplement, at 2.

⁹ See *also*, Futurewise Reply, at 5-6.

¹⁰ See Fn. 171, County Response, at 32.

1 they should remember as much for future matters. The Board does not deem it necessary
2 to take official notice of ESHB 2905 itself; these provisions were codified in RCW
3 36.70A.070 and have been in effect since 2004 – the statute speaks for itself. **The Board**
4 **shall take official notice of ESHB 2905’s Senate Bill Report cited by the County and**
5 **the Final Bill Report provided by Dry Creek.**
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7 Motions to Dismiss

8 On February 22, 2008, Clallam County filed a Motion to Dismiss Futurewise Issue 7 (County
9 Motion to Dismiss). This motion will be discussed within the Board’s Discussion in regard to
10 Legal Issue 14 (Futurewise Issue 7).
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13 **IV. BURDEN OF PROOF**

14 For purposes of Board review of the comprehensive plans and development regulations
15 adopted by local government, the GMA establishes three major precepts: a presumption of
16 validity; a “clearly erroneous” standard of review; and a requirement of deference to the
17 decisions of local government.
18

19 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
20 amendments to them are presumed valid upon adoption. The statute further provides that
21 the standard of review shall be whether the challenged enactments are clearly erroneous:
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23 The board shall find compliance unless it determines that the action by the
24 state agency, county, or city is clearly erroneous in view of the entire record
25 before the board and in light of the goals and requirements of this chapter.

26 RCW 36.70A.320(3)

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28 In order to find the County’s action clearly erroneous, the Board must be “left with the firm
29 and definite conviction that a mistake has been made.” *Department of Ecology v. PUD1*,
30 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
31

32 Within the framework of state goals and requirements, the boards must grant deference to
local government in how they plan for growth:

1 In recognition of the broad range of discretion that may be exercised by
2 counties and cities in how they plan for growth, consistent with the
3 requirements and goals of this chapter, the legislature intends for the boards
4 to grant deference to the counties and cities in how they plan for growth,
5 consistent with the requirements and goals of this chapter. Local
6 comprehensive plans and development regulations require counties and cities
7 to balance priorities and options for action in full consideration of local
8 circumstances. The legislature finds that while this chapter requires local
9 planning to take place within a framework of state goals and requirements, the
10 ultimate burden and responsibility for planning, harmonizing the planning goals
11 of this chapter, and implementing a county's or city's future rests with that
12 community.

13 RCW 36.70A.3201 (in part).

14 In sum, the burden is on Petitioners to overcome the presumption of validity and
15 demonstrate that any action taken by the City is clearly erroneous in light of the goals and
16 requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
17 Where not clearly erroneous and thus within the framework of state goals and requirements,
18 the planning choices of local government must be granted deference.

19 **V. ISSUES PRESENTED**

20 On August 28, 2007 Clallam County adopted Ordinance No. 827 and Resolution No. 77,
21 2007. Ordinance No. 827 amended Clallam County Code, Chapter 31.02 to add a new
22 section formally identifying certain land areas as limited areas of more intensive rural
23 development (LAMIRDs). Resolution No. 77, 2007 was adopted as part of the County's
24 GMA Review and Update pursuant to RCW 36.70A.130. Resolution 77, 2007 itself did not
25 amend any portion of the County's Comprehensive Plan (CP) or Development Regulations
26 (DRs), rather the Resolution declared that the County had conducted the review required by
27 RCW 36.70A.130 and that the CP and DRs complied with the GMA, setting forth 29
28 Findings of Fact to support this conclusion.¹¹
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¹¹ Index No. 12.
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1 The issues presented in this case pertain to Clallam County’s development regulations,
2 including permitted densities within rural and urban areas; the designation of LAMIRDs,
3 including the provision for new and/or expanded uses and the intensification of existing
4 uses; detached accessory dwelling units; the provision of urban services outside of the
5 UGA; the provision of needed capital facilities and services within specific UGAs; the sizing
6 of the UGAs given OFM population forecasts; and the requirement to review and revise
7 comprehensive plan provisions and development regulations.
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10 To prevent redundancy, each legal issue will be set forth when the Board is addressing that
11 legal issue in the Discussion section below (see Part VI). In order to avoid confusion with
12 Dry Creek’s issues and to maintain the numerical ordering of issues, Futurewise’s Legal
13 Issues - Issues 1 through 8, as stated in the Prehearing Order, will for the purpose of this
14 order, be renumbered as Legal Issues 8 through 15.
15

16 **VI. DISCUSSION**

17 For the purpose of this decision, the Board will discuss the legal issues in the following
18 order:

- 19
- 20 A. Limited Areas of More Intensive Rural Development (LAMIRDs)
- 21 • Use/Intensity –Legal Issues 1, 2, 3 (in part), 5, and 6 (Dry Creek)
 - 22 • Pre-LAMIRD Zoning Districts Designated as LAMIRDs – Legal Issue 4 (Dry
23 Creek)
 - 24 • Designation of New/Expanded LAMIRDs – Legal Issue 3 (in part) (Dry Creek)
 - 25 • Sizing of LAMIRDs – Logical Outer Boundaries –Legal Issue 10 (Futurewise
26 Issue 3); Legal Issues 1, 2, 3, 5, and 6 (Dry Creek)
- 27 B. Rural Densities – Legal Issue 8 (Futurewise Issue 1)
- 28 C. Accessory Dwelling Units – Legal Issue 9 (Futurewise Issue 2)
- 29 D. Urban Densities – Legal Issue 12 (Futurewise Issue 5)
- 30 E. Urban Facilities and Services within the UGA – Legal Issue 11 (Futurewise Issue 4);
31 Legal Issue 13 (Futurewise Issue 6)
- 32 F. UGA Sizing – Legal Issue 14 (Futurewise Issue 7)

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G. Sequim-Dungeness Regional Plan – Legal Issue 15 (Futurewise Issue 8)

H. Invalidity

Applicable Law

Each of the Petitioners cite to similar provisions of the GMA. Therefore, all provisions applicable to this decision are set forth as follows:

RCW 36.70A.020(1): Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner.

RCW 36.70A.020(2): Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

RCW 36.70A.020(8): Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

RCW 36.70A.020(9): Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.

RCW 36.70A.020(10): Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

RCW 36.70A.020(12): Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

RCW 36.70A.040: Who must plan -- Summary of requirements --
Development regulations must implement comprehensive plans

RCW 36.70A.070: (Preamble, in relevant part); ... The plan shall be an internally consistent document and all elements shall be consistent with the future land use map...

1 RCW 36.70A.070(1): Land Use Element

2 RCW 36.70A.070(5): Rural Element

3
4 RCW 36.70A.110: Comprehensive Plans – UGAs

5 RCW 36.70A.115: Comprehensive plans and development regulations must
6 provide sufficient land capacity for development.

7
8 RCW 36.70A.120: Planning activities and capital budget decisions --
9 Implementation in conformity with comprehensive plan.

10 RCW 36.70A.130 (in relevant part): (1)(a) Each comprehensive land use plan
11 and development regulations shall be subject to continuing review and
12 evaluation by the county or city that adopted them. Except as otherwise
13 provided, a county or city shall take legislative action to review and, if needed,
14 revise its comprehensive land use plan and development regulations to ensure
the plan and regulations comply with the requirements of this chapter ...

15 RCW 36.70A.177: Agricultural lands -- Innovative zoning techniques --
16 Accessory uses.

17 LEGAL ISSUES

18 19 **A. LIMITED AREAS OF MORE INTENSIVE RURAL DEVELOPMENT (LAMIRDS)**

20 21 • **Use and Intensity**

22 For the purpose of its briefing, Dry Creek combines, in large part, its argument in regard to
23 Legal Issues 1, 2, 3, 5, and 6 when addressing the size, use, and intensity of the County's
24 LAMIRDS. Therefore, the Board will address these issues in a similar format.

25
26 ***Legal Issue No. 1 (Dry Creek Issue 1): Whether the LAMIRDS, areas, uses, and intensities***
27 ***within LAMIRDS, and LAMIRD boundaries established by Section 1, Subsection 5, of***
28 ***Ordinance 827 are in compliance with RCW 36.70A.020(1) regarding encouraging***
29 ***development in urban areas RCW 36.70A.020(2) regarding discouraging sprawl, RCW***
30 ***36.70A.020(10) regarding protecting the rural environment and character, RCW 36.70A.040***
31 ***regarding adopting a plan under Ch. 36.70A RCW, RCW 36.70A.070(preamble) regarding***
32 ***internal consistency, RCW 36.70A.070(1) regarding specification of extent of uses, densities***
and intensities, RCW 36.70A.070(5) regarding compliance with LAMIRD standards, and
RCW 36.70A.130 regarding updating for full compliance with identified sections to the

1 degree the County simply designated areas with pre-LAMIRD more intensive zoning as
2 LAMIRDs and retained pre-LAMIRD zoned uses and intensities?

3 **Legal Issue No. 2 (Dry Creek Issue 2):** Whether after adopting Ordinance 827 and
4 Resolution 77, 2007, the zoning code provisions including the zoning map and allowed uses
5 for the areas designated as LAMIRDs are in compliance with RCW 36.70A.020(1) regarding
6 encouraging development in urban areas, RCW 36.70A.020(2) regarding discouraging
7 sprawl, RCW 36.70A.020(10) regarding protecting rural environment and character, RCW
8 36.70A.040 regarding regulations consistent with and fully implementing the plan, RCW
9 36.70A.070(preamble) implying internally consistent regulations, and RCW 36.70A.130
regarding requirement to update development regulations?

10 **Legal Issue No. 3 (Dry Creek Issue 3) (in part):** Whether after adopting Ordinance 827
11 and Resolution 77, 2007, the provisions that relate to allowing (or failing to prohibit) new
12 and/or expansion and/or intensification of LAMIRDs in Section 1, Subsection 7 of
13 Ordinance 827, CCC 31.08.300 et seq. and CCC 33.35.010 et seq. are in compliance with
14 RCW 36.70A.020(1) regarding encouraging development in urban areas, RCW
15 36.70A.020(2) regarding discouraging sprawl, RCW 36.70A.020(10) regarding protecting
16 rural environment and character, RCW 36.70A.040 regarding adopting a plan and
17 implementing consistent regulations under Ch. 36.70A RCW, RCW 36.70A.070(preamble)
18 regarding internal consistency, RCW 36.70A.070(1) regarding specification of extent of
19 uses, densities and intensities, RCW 36.70A.070(5) regarding compliance with LAMIRD
20 standards, and RCW 36.70A.130 regarding updating for full compliance with identified
21 sections because LAMIRDs are generally a one time designation and cannot create new
22 patterns of sprawl?

23 **Legal Issue No. 5 (Dry Creek Issue 5):** Whether after adopting Ordinance 827 and
24 Resolution 77, 2007, the provisions that relate to the designation, boundary, and zoning in
25 Laird's LAMIRD West in the Comprehensive Plan and Development Regulations are in
26 compliance with RCW 36.70A.020(1) regarding encouraging development in urban areas,
27 RCW 36.70A.020(2) regarding discouraging sprawl, RCW 36.70A.020(10) regarding
28 protecting rural environment and character, RCW 36.70A.040 regarding adopting a plan and
29 implementing consistent regulations under Ch. 36.70A RCW, RCW 36.70A.070(preamble)
30 regarding internal consistency, RCW 36.70A.070(1) regarding specification of extent of
31 uses, densities and intensities, RCW 36.70A.070(5) regarding compliance with LAMIRD
32 standards, and RCW 36.70A.130 regarding updating for full compliance with identified
sections because the LAMIRD was designated based on existing zoning and not based on
a valid LAMIRD analysis?

Legal Issue No. 6 (Dry Creek Issue 6): Whether after adopting Ordinance 827 and
Resolution 77, 2007, the provisions that relate to Wood Manufacturing in the RLC LAMIRD
designation and zone and outdoor-oriented recreation activities in the RNC and RLC
LAMIRD designation and zone in the Comprehensive Plan and Development Regulations

1 are in compliance with RCW 36.70A.020(1) regarding encouraging development in urban
2 areas, RCW 36.70A.020(2) regarding discouraging sprawl, RCW 36.70A.020(10) regarding
3 protecting rural environment and character, RCW 36.70A.040 regarding adopting a plan and
4 implementing consistent regulations under Ch. 36.70A RCW, RCW 36.70A.070(preamble)
5 regarding internal consistency, RCW 36.70A.070(1) regarding specification of extent of
6 uses, densities and intensities, RCW 36.70A.070(5) regarding compliance with LAMIRD
7 standards, and RCW 36.70A.130 regarding updating for full compliance with identified
8 sections because such uses are too broad compared to 1990 existing uses?

8 Applicable Law – Supra

9 With the exception of RCW 36.70A.070(5), .020(1), .020(2), .020(10), .040(3), and
10 .130(1)(d), Dry Creek fails to set forth any argument in regard to the other cited RCW
11 provisions and therefore these provisions are deemed abandoned.
12

13 Positions of the parties

14 Dry Creek opens its argument in regard to these legal issues by contending that not all of
15 the County’s existing rural centers have been designated as LAMIRDS and that rural zoning
16 districts permit development at densities of greater than 1 du/5 acres without requiring such
17 development to be located within a LAMIRD.¹² According to Dry Creek, this violates RCW
18 36.70A.070(5) because this provision “generally requires qualification as a LAMIRD for rural
19 densities greater than [1 du/5 acre].”¹³
20

21
22 However, the foundation of Dry Creek’s argument is that the County’s CP and DRs permit
23 uses in a LAMIRD which are more intensive than those that existed in 1990.¹⁴ Dry Creek
24 asserts that it is the County’s zoning regulations which control uses in LAMIRDS, not July
25 1990 - the baseline year established in the GMA, and permitted uses are “significantly more
26 intensive.”¹⁵ Specifically, Dry Creek points to two LAMIRDS – Laird’s West and Laird’s East
27 – to support its argument.
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31 ¹² Dry Creek HOM Brief, at 6

32 ¹³ *Id.* at 6-7 (citing *Friday Harbor v. San Juan County*, WWGMHB Case NO. 99-2-0010, FDO at 5 (July 21, 1999).

¹⁴ *Id.* at 7-15.

¹⁵ *Id.* at 7.

1 According to Dry Creek, in 1990 Laird's West only had three rural commercial/industrial
2 uses – a grocery, a fast food facility, and a tavern – and one single-family residence.¹⁶
3 Now, with the new Clallam County Code (CCC) provisions and Rural Neighborhood Center
4 (RNC) zoning, Dry Creek contends the allowed uses within the LAMIRD are “substantially
5 different than the 1990 existing uses,” both in regard to residential as well as commercial
6 uses.¹⁷ Dry Creek asserts that permitted uses that did not exist in 1990 violate the
7 requirements of .070(5), .040(3), .130(1)(d) and fails to comply with GMA goals 1, 2, and
8 10.¹⁸
9

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11 As for Laird's East, Dry Creek argues that no development existing in 1990 except for a log
12 storage yard on three of the 10 parcels and a single family residence.¹⁹ According to Dry
13 Creek, uses which currently exist within the LAMIRD – an auto wrecking yard and a wood
14 product manufacturing plant (lumber mill) - did not exist in 1990.²⁰ Dry Creek argues that the
15 lumber mill is on the site of the log storage yard, but the mill did not open for production until
16 later and is at a scale that is inappropriate for its rural location.²¹
17

18 Similar to Laird's West, Dry Creek contends that allowed uses under the Rural Commercial
19 Limited (RLC) and RNC zoning districts, either outright or by conditional use permits, would
20 substantially increase the intensity of rural development for the LAMIRD compared to uses
21 that existed in 1990.²² According to Dry Creek, uses are limited to agricultural growing
22 activities, commercial storage, a single-family residence with a business, and timber
23 harvesting because those were the uses in existence in 1990.²³
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29 ¹⁶ *Id.* at 8-9.
30 ¹⁷ *Id.* at 9-10.
31 ¹⁸ *Id.* at 10.
32 ¹⁹ *Id.* at 10-12.
²⁰ *Id.*
²¹ *Id.* at 13.
²² *Id.* at 13-15.
²³ *Id.*

1 As a secondary argument, Dry Creek asserts that the County's LAMIRDs are oversized and
2 adopted Futurewise's arguments in regards to this issue.²⁴ Therefore, the Board will
3 address this claim within the Board Discussion pertaining to Legal Issue 10 (Futurewise
4 Issue 3).

5
6 In response, the County challenges Dry Creek's presumption that only specific businesses
7 in an area as of July 1, 1990 may be allowed in a LAMIRD. Instead, the County argues, the
8 focus should be on the types of uses that were in existence on that date.²⁵ The County also
9 argues that the Legislature provided flexibility to change the uses within LAMIRDs, citing to
10 RCW 36.70A.070(5)(d)(i)(C). With regard to Laird's LAMIRD, the County notes that this
11 was a mixed use area with commercial and residential uses, and therefore these uses may
12 continue and even change.²⁶ With regard to the issue of intensities within a LAMIRD, the
13 County notes that the variety of uses allowed within a LAMIRD in the County must be
14 consistent with the area's character. Further, some uses that Dry Creek objects to, such as
15 a racetrack, would be permitted only with a special permitting process that requires that the
16 proposed use is consistent with the applicable land use regulations and the character of the
17 neighborhood.²⁷

20 21 Board Discussion

22 The issue of the proper size of the Laird's Corner and the other challenged LAMIRDs is
23 discussed elsewhere in this Order. In this section the Board examines *only* the issue of
24 permissible uses and intensities as applicable to those parcels found to have been properly
25 included in the LAMIRD.

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32 ²⁴ *Id.* at 15.

²⁵ Clallam County's Corrected Response Brief at 32.

²⁶ *Id.* at 33.

²⁷ *Id.*

1 Dry Creek’s argument that the County’s CP “fails to include all of the areas where more
2 intensive development is allowed”²⁸ does not acknowledge that LAMIRDs are not a
3 mandatory designation under the GMA.²⁹ Dry Creek has not demonstrated that the
4 continued existence of rural centers in the County is a violation of the GMA. Thus, it is not a
5 violation of the GMA that there are areas that the County could have designated as
6 LAMIRDs but chose not to. To the extent that Dry Creek’s argument is that allowance of
7 development at greater than 1 du/5 acre outside of a LAMIRD is a violation, that argument
8 is addressed elsewhere in this Order.
9

10
11 Next, the Board finds unpersuasive Dry Creek’s argument that the County has violated the
12 GMA by failing to limit uses in Type I LAMIRDs to uses there were in existence in each
13 LAMIRD on July 1, 1990. Dry Creek’s limited reading of the statute would, for example, limit
14 the allowed uses in Laird’s LAMIRD West to only those found there on July 1, 1990 –
15 taverns, grocery stores and restaurants.³⁰
16

17 As the County points out, the Legislature amended the GMA in 2004 to provide flexibility to
18 change uses within LAMIRDs. RCW 36.70A.070(5)(d)(i)(C) provides that:

19
20 “Any development or **redevelopment in terms of building size, scale, use,**
21 **or intensity** shall be consistent with the character of the existing areas.
22 Development and redevelopment may include **changes in use** from vacant
23 land or a previously existing use so long as the new use conforms to the
24 requirements of this subsection (5);” (emphasis added).

25 Thus, changes in use are allowed so long as they remain consistent with the character of
26 the existing area.
27

28 As an example of the improper intensification within a LAMIRD, Dry Creek points to the
29 County’s CP for the Port Angeles Region, and asserts that the allowed and conditionally-
30 allowed uses are significantly more intensive than the uses that existed in the LAMIRD
31

32

²⁸ Dry Creek’s Opening Brief at 6.
²⁹ RCW 36.70A.070(5)(d).
³⁰ Dry Creek’s Opening Brief at 14.

1 areas in 1990.³¹ However, as to this region, Dry Creek fails to support its argument with the
2 record. The bare assertion that the CP “wrongly allows all LAMIRD uses allowed by the
3 zoning code”³² or “wrongly includes 34 allowed or conditionally allowed uses”³³ without
4 evidence that the allowed or conditionally allowed uses are not consistent with the character
5 of the existing area fails to sustain the Petitioner’s burden of proof.
6

7 Dry Creek provides far more detail in its analysis of Laird’s LAMIRD East and West. Its
8 parcel by parcel analysis identified uses in existence in 1990 and, based on this pattern of
9 use, seeks to show the uses in Laird’s LAMIRD West are more intensive than the uses that
10 existed in 1990 and should be prohibited.
11

12 As to Laird’s LAMIRD East, this area contains lands designated RNC and RLC. In the RNC
13 area (Parcels 8, 9, and 10) Dry Creek argues that these parcels were not in use in 1990,
14 though Parcel 9 today contains a health clinic. While Dry Creek does not oppose the health
15 clinic, it requests that all other uses allowed by the CCC be found not to comply with the
16 GMA requirement to minimize and contain existing uses. As noted above, the issue of the
17 size of the County’s LAMIRDs, in particular whether parcels that were undeveloped in 1990
18 ought to have been included within the logical outer boundary (LOB), is considered
19 elsewhere in this Order.
20
21

22 In the RLC area (Parcels 1 to 7) Dry Creek acknowledges that there was a log storage yard
23 on Parcels 4, 5, and 6 and a non-conforming auto-wrecking yard on Parcel 7. Dry Creek
24 argues that there was no use on Parcels 1, 2, and 3. However, Dry Creek has failed to
25 establish that wood product manufacturing plant is not consistent with the character of the
26 existing area. Such a commercial timber-based use appears consistent with the use that
27 existed in 1990.
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32 ³¹ Id. at 7.

³² Id. at 8.

³³ Id.

1 The County's LAMIRD report reflects that commercial uses in the area dated back to June
2 1990. Such uses are allowed to develop or redevelop consistent with RCW
3 36.70A.(5)(d)(i)(C). This includes changes in use "so long as the new use conforms to the
4 requirements of this subsection [5]". However, the County's limitation on conditional uses is
5 not sufficiently specific. In both the RNC and RLC zones, the County permits a number of
6 uses "consistent with applicable land use regulations and the character of the
7 neighborhood".³⁴ This limitation is not sufficient in light of RCW 36.70A.070(5)(d)(v)'s
8 direction that the "existing area or existing use" with which any development or development
9 shall be consistent is the existing area or existing use as of July 1, 1990. Consequently, the
10 Board finds that, while the County is entitled to allow uses consistent with the existing areas
11 and those uses are not limited to the particular type of uses found in 1990, they must be
12 consistent with the areas and the uses must be similar to the use, scale, size, and intensity
13 as the uses that existed as of July 1, 1990. Because the County's conditional use
14 provisions allow a potentially broader range of uses, they are non-compliant.
15
16

17 **Conclusion:** While the County is entitled to allow uses within LAMIRDs consistent with
18 those of the existing areas, they must be consistent with the areas and uses as of July 1,
19 1990. Because the County's conditional use provisions allow a potentially broader range of
20 uses, they are non-compliant.
21
22

23 • **Pre-LAMIRD Zoning Districts Designated as LAMIRDs**

24 **Legal Issue No. 4 (Dry Creek Issue 4):** *Whether after adopting Ordinance 827 and the*
25 *Resolution 77, 2007, the provisions that relate to continuing present designations and*
26 *zoning in Section 1, Subsection 3(c) of Ordinance 827, of lands that are currently*
27 *designated as LAMIRDs in the Comprehensive Plan and Development Regulations are in*
28 *compliance with RCW 36.70A.020(1) regarding encouraging development in urban areas,*
29 *RCW 36.70A.020(2) regarding discouraging sprawl, RCW 36.70A.020(10) regarding*
30 *protecting rural environment and character, RCW 36.70A.040 regarding adopting a plan and*
31 *implementing consistent regulations under Ch. 36.70A RCW, RCW 36.70A.070(preamble)*
32 *regarding internal consistency, RCW 36.70A.070(1) regarding specification of extent of*

³⁴ See, eg. CCC 33.15.050 and CCC 33.15.060

1 uses, densities and intensities, RCW 36.70A.070(5) regarding compliance with LAMIRD
2 standards, and RCW 36.70A.130 regarding updating for full compliance with identified
3 sections because after 1997 rural designations and zoning generally must validly be in
4 LAMIRDs to allow more intensive development?

5 Applicable Law – Supra

6 Within its argument, Dry Creek only cites to RCW 36.70A.020(1), .020(2), .020(10), .070(5),
7 and .130. Therefore all other cited provisions are deemed abandoned.

8
9 Positions of the parties

10 Dry Creek argues that the GMA requires new more intensive rural development be located
11 in areas that satisfy the LAMIRD criteria.³⁵ Dry Creek notes that the GMA has provided only
12 two exceptions to this mandate – such development may occur in a Master Planned Resort
13 or a Major Industrial Development.³⁶ According to Dry Creek, the County’s CP sets forth
14 provisions which may provide justification for new development in existing zoning districts
15 that do not comply with LAMIRD criteria.³⁷ In particular, Dry Creek questions the provisions
16 of Ordinance No. 827 that find that the County has an “independent legal basis” to continue
17 with the present zoning in the event that any particular LAMIRD is found to contravene GMA
18 criteria for LAMIRDs.
19

20
21 In response, the County argues that Dry Creek’s assertion that certain code provisions imply
22 new Type 1 LAMIRDs³⁸ may be designated or extended in the future fails to recognize that
23 such a revision would require an amendment to the comprehensive plan and Zoning/Land
24 Use Map and that the GMA does not prohibit expansion of this type of LAMIRD.³⁹
25 Additionally, the County notes that any amendment must demonstrate consistency with the
26 GMA and would be subject to Board review upon filing of a PFR.⁴⁰
27

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30 ³⁵ Dry Creek HOM Brief, at 3.

³⁶ *Id.*

³⁷ *Id.* (citing CCC 31.02.263(3)(c) and (d))

³⁸ LAMIRDs that fit the description set out in RCW 36.70A.070(5)(d)(i).

³⁹ County Response, at 25 (citing to *1000 Friends v. Snohomish County*, CPSGMHB Case No. 03-3-0026,
FDO at 7 (June 21, 2004).

⁴⁰ *Id.*

1 In reply, Dry Creek reiterates its argument set forth in its HOM Brief and further asserts that
2 the County's recognition of areas previously zoned for mixed-use, commercial, industrial,
3 and residential densities as LAMIRDs does not demonstrate that these areas meet LAMIRD
4 standards.⁴¹ According to Dry Creek, RCW 36.70A.070(5)(d), specifically sets forth the
5 requirements for LAMIRDs and other, more general GMA provisions do not permit non-
6 compliance.⁴²
7

8 Board Discussion

9
10 The basis of Dry Creek's argument is that the County, in merely designating all rural areas
11 that were previously determined to have contained more intensive development and zoned
12 as such in 1995, failed to adequately review these areas for compliance with the GMA's
13 LAMIRD criteria, which was adopted in 2004.
14

15 In *Wells v. Whatcom County*,⁴³ this Board noted that "existing zoning cannot be a sole
16 criterion for designating rural lands for more intense development." The Board does not
17 depart from that principle. If the Legislature had intended for counties to merely adopt
18 zoning boundaries as the LOB, it would have said so, and it has not. Adopting pre-existing
19 zoning to establish the LAMIRD would in many if not most cases bring within the LOB areas
20 that are in no way characterized by urban growth.
21

22
23 Yet, while the GMA provides a detailed set of criteria for the designation of the LOB that
24 goes beyond merely recognizing pre-existing zoning boundaries, it is not necessarily true
25 that adopting those zoning boundaries as the LOB would create non-compliant LAMIRDs.
26 The County asserts that, for the 46 rural lands that were zoned for mixed-use, commercial,
27 industrial, and residential densities of 1 du/acre or greater, these areas were well-
28 established after decades of development and infill.⁴⁴ In areas where the zoning boundaries
29 match areas that qualifying as the LOB under RCW 36.70A.070(5), there would be no GMA
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31
32 ⁴¹ Dry Creek Reply, at 4-5.

⁴² *Id.* at 6

⁴³ WWGMHB No. 97-2-0030c, Final Decision and Order (1/16/98)

⁴⁴ County's Corrected Response Brief at 22.

1 violation. However, where those zoning boundaries do not contain areas that would match
2 a properly drawn LOB, the fact of pre-existing zoning does not justify noncompliance. The
3 Board rejects the County's argument that it possesses "an independent legal basis" to
4 designate LAMIRDs that contravene GMA criteria. The County asserts that RCW
5 36.70A.070(5)(a)'s provision allowing a county to consider local circumstances, based on a
6 written record, in establishing patterns of rural densities and uses provides for such an
7 independent basis. However, to adopt this interpretation would make RCW
8 36.70A.070(5)(d) superfluous. Rather than base the boundaries of LAMIRDs on the criteria
9 provided in the GMA, the County would merely need to explain "how the rural element
10 harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this
11 chapter".⁴⁵ While this interpretation would certainly relieve the County of the burden of
12 complying with RCW 36.70A.070(5)(d), it would violate at least two rules of statutory
13 construction.
14

15
16 First, statutes should be read in a manner such that all statutory language is given effect
17 and no portions are superfluous.⁴⁶ The Board declines to accept the County's reasoning, as
18 it renders the language of RCW 36.70A.070(5)(d) superfluous.
19

20
21 Second, each provision of a statute should be read together with related provisions to
22 determine the legislative intent underlying the entire statutory scheme. Reading the
23 provisions as a unified whole maintains the integrity of the respective provisions of the
24 statute. A more specific provision supersedes a general provision if the two provisions
25 pertain to the same subject matter and conflict to the extent they cannot be harmonized.⁴⁷
26 Here, reading the provisions of RCW 36.70A.050(5)(a) in the manner advocated by the
27 County would undermine the clear Legislative intent in the remainder of the statute to
28 confine LAMIRDs to those areas meeting the criteria of RCW 36.70A.070 (5)(d).
29

30
31
32 ⁴⁵ RCW 36.70A.070(5)(a).

⁴⁶ *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999) (quoting *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996)); *Marina Cove*, 109 Wn. App. at 241.

⁴⁷ *In re Estate of Kerr*, 134 Wn. 2d 328, 949 P.2d 810 (1998).

1 However, merely because the Board rejects the County’s “independent legal basis” for
2 establishing LAMIRDs does not mean that the LAMIRDs themselves are noncompliant.
3 While the County argues that it relied on the pre-existing zoning boundaries, it also claims
4 that “[I]n analyzing its [LAMIRDs], the County specifically applied” the factors laid out in
5 RCW 36.70A.070(5)(d)(iv).⁴⁸ Therefore, the Board will review these LAMIRDs in light of the
6 GMA’s LAMIRD criteria to determine if the County’s challenged LAMIRDs are compliant.
7 Those LAMIRDs are considered elsewhere in this Order.
8

9
10 **Conclusion:** The County can not rely on RCW 36.70A.070(5)(a) as an independent legal
11 basis for LAMIRDs that contravene established GMA criteria. However, even where a basis
12 for establishing the LOB was pre-existing zoning boundaries, LAMIRDs that also meet the
13 criteria of RCW 36.70A.070(5)(d) will be found compliant .
14

15 • **Designation of New/Expanded LAMIRDs**

16 A portion of this Legal Issue, Dry Creek Issue 3, was addressed *supra*, under the Board’s
17 general analysis in regards to LAMIRDs – use and intensity. The full text of the Legal Issue
18 set out in that portion of the Board’s discussion. Dry Creek provided additional legal
19 argument on this issue in regards to the creation of new LAMIRDS.
20

21
22 **Applicable Law - Supra**

23 Within its legal argument, Dry Creek only cites to RCW 36.70A.070(5). All other provisions
24 are deemed abandoned.
25

26 **Positions of the Parties**

27 Dry Creek asserts that the County fails to comply with the GMA because it does not prohibit:
28 (1) future creation of new Type 1 LAMIRDs, (2) future Type 3 LAMIRDs⁴⁹ from being located
29 near other LAMIRDS as opposed to isolated, and (3) future expansion of existing Type 1,
30
31

32

⁴⁸ County’s Corrected Response Brief at 26.

⁴⁹ LAMIRDs that fit the description set out RCW 36.70A.070 (5)(d)(iii)

1 2,⁵⁰ and 3 LAMIRDS.⁵¹ Dry Creek specifically points to CCC 31.02.263(7)(c) and argues
2 this provisions states a LAMIRD boundary may be expanded upon a demonstration of
3 consistency with the GMA and the CCC. According to Dry Creek, this creates the
4 possibility of the creation of new LAMIRDS and fails to prohibit the expansion, or outfill, of
5 existing LAMIRDS.⁵² Dry Creek further contends the County has failed to require Type 2
6 and Type 3 LAMIRDS to be small scale.⁵³
7

8 In response, the County sets forth the same argument it did with Legal issue 3 - Dry Creek's
9 assertion that the cited CCC provisions imply new Type 1 LAMIRDS may be designated or
10 extended in the future fails to recognize that such a revision would require an amended to
11 the CP and Zoning/Land Use Map and that the GMA does not prohibit expansion of this
12 types of LAMIRDS.⁵⁴ Additionally, the County notes that any amendment must demonstrate
13 consistency with the GMA and would be subject to Board review upon filing of a PFR.⁵⁵
14

15
16 In reply, Dry Creek contends that although amendments to LAMIRDS may be subject to
17 Board review, the County's CP fails to provide guidance as to what LAMIRD amendments
18 are allowed and therefore the County will "continuously process and adopt LAMIRD
19 amendments that do not comply with the GMA."⁵⁶ Dry Creek asserts that the GMA requires
20 measures to minimize and contain existing LAMIRDS and by providing for future creation
21 and/or expansion, the County is not complying with the GMA.⁵⁷ Dry Creek argues that
22 Western Board cases cited in its HOM Brief support its claim that LAMIRDS may not be
23 expanded and have precedential value, in contrast to the Central Board case cited by the
24 County.⁵⁸
25
26
27

28 ⁵⁰ LAMIRDS that fit the description set out in RCW 36.70A.070(5)(d)(ii).

29 ⁵¹ Dry Creek HOM Brief, at 4, 6.

30 ⁵² *Id.* at 5-6.

31 ⁵³ *Id.* at 6.

32 ⁵⁴ County Response, at 25.

⁵⁵ *Id.*

⁵⁶ Dry Creek Reply, at 8.

⁵⁷ *Id.*

⁵⁸ *Id.* at 8-9.

1 Board Discussion

2 In essence, Dry Creek’s claim is that the County has one, and only one, opportunity to
3 designate an area as a LAMIRD and once this is done, no further amendments are
4 permitted. The Board disagrees. Nothing in the GMA expressly prohibits a county from
5 reconsidering the boundaries of a LAMIRD or establishing a LAMIRD at a later date. The
6 only condition the Legislature chose to impose is that the boundaries of a LAMIRD meet the
7 applicable requirements. Subsection 7(c) of Ordinance No. 827, which provides that “Any
8 request for a change in LAMIRD boundaries must demonstrate consistency with the [GMA]
9 and with this Title” reflects this and is not inconsistent with the GMA. If a county can show
10 its work, and the change remains consistent with the GMA, it may revise the LOB of a
11 LAMIRD.⁵⁹
12

13
14 The issue of expansion of a Type I LAMIRD was also addressed by the Central Board in
15 *1000 Friends of Washington v. Snohomish County*, CPSGMHB No. 03-3-0026, FDO (June
16 21, 2004). There the Board noted:
17

18 Further, the GMA acknowledges and recognizes that a comprehensive plan is
19 not a static product, but part of a dynamic process. The Act requires that plans
20 [including UGAs and all plan elements], and development regulations are
21 subject to ongoing review and evaluation, with periodic revisions and updates
22 required and allowed. See e.g., RCW 36.70A.130, .110 and .215. Therefore, in
23 light of the broad and dynamic planning context of the GMA, this Board will not
24 interpret RCW 36.70A.070(5)(d) to prohibit the potential expansion of
25 established Type I LAMIRDs. The Board holds that RCW 36.70A.070(5)(d)
26 does not prohibit the potential expansion of Type I LAMIRDs. However, just as
27 an initial LAMIRD designation must meet the LAMIRD criteria of the Act, so
28 too must any LAMIRD expansion.
29

30
31 ⁵⁹ The Board notes the holding of our colleagues at the Central Puget Sound Board. See, *City of Tacoma et*
32 *al. v. CPSGMHB* No. 06-3-001c, FDO at 10-11 (November 27, 2006) (Board denied a challenge to expansion
of a Rural Neighborhood Center, previously designated as a LAMIRD, to include four acres that “housed an
industrial use prior to July 1, 1990 and that is easily identified by the many structures remaining on the site – it
is a built environment.)

1 This Board finds this reasoning persuasive and applicable to the issue raised in this case.
2 The cases that Dry Creek cites in support of its position of the immutability of LAMIRDs are
3 distinguishable. In *Olympic Environmental Council v. Jefferson County*, WWGMHB No. 00-
4 2-0019, FDO (November 22, 2000), this Board concluded that the county allowed expansion
5 of noncompliant LAMIRDs because in each case “the expansion went beyond the original
6 logical boundaries as predominantly delineated by the built environment.”⁶⁰ The Board did
7 not conclude, as Dry Creek suggests, that a county may never revise the LOB of a LAMIRD.
8

9
10 In *People for a Livable Community v. Jefferson County*, WWGMHB No. 03-2-0009c, FDO
11 (August 22, 2003), which Dry Creek also relies upon, this Board was reviewing a
12 comprehensive plan amendment that provided:

13 Through this plan, Jefferson County will continuously identify and allocate
14 sufficient commercial and industrial land to meet future needs based on
15 the 1997 amendments to the GMA allowing rural counties to recognize
16 “existing areas and uses.”

17 The issue before the Board, therefore, was whether the county could create or expand
18 LAMIRDs based on a need for new commercial land, rather than on whether the land met
19 the built environments and LOB standards. Thus, the Board does not find that this case
20 supports Dry Creek’s position.
21

22
23 The third Board case relied upon by Dry Creek for the proposition that no new Type I
24 LAMIRDs may be established in the future is *Anacortes v. Skagit County*, WWGMHB No.
25 00-2-0049c, CO (January 31, 2002). While the Board in that case expressed concern over
26 the establishment of new LAMIRD designations six years after the opportunity was provided
27 in RCW 36.70A.070(5)(d), the challenge to the establishment of a new LAMIRD was not
28 included in the PFR. Instead, the Board was merely commenting on the allegation that the
29 county was processing three Rural Freeway Service designations despite county staff’s
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31
32

⁶⁰ *Olympic* at 3.

1 recommendations to the contrary. Thus, the language Dry Creek relies upon was *dicta* and
2 does not control the result in the present case.

3
4 **Conclusion:** Petitioner Dry Creek has not demonstrated that County failed to comply with
5 the GMA because it does not prohibit new or expanded LAMIRDs.

6
7 • **Sizing of LAMIRDs – Logical Outer Boundaries**

8 **Legal Issue No. 10 (Futurewise Issue 3):** *Whether the County’s LAMIRD provisions and*
9 *designations for the LAMIRDs described in Issue No. 8 [Futurewise Issue 1], as identified in*
10 *Ordinance 827 and described in Section 20(E) of Resolution 77, and failure to review and*
11 *revise comprehensive plan provision Sequim-Dungeness Regional Plan 31.03.260 Rural*
12 *land – Inventory and analysis allowing LAMIRDs and the expansion of LAMIRDs violate*
13 *RCW 36.70A.020 (1-2, 8-10, 12), 36.70A.040, 36.70A.070, 36.70A.110, and 36.70A.130?*

14 As noted *supra*, Dry Creek asserted that the County’s UGAs were oversized in the context
15 of Legal Issues 1, 2, 3, 5, and 6 but subsequently adopted Futurewise’s argument in
16 regards to this assertion.⁶¹ Dry Creek did provide some additional argument which will be
17 noted below.

18
19 Applicable Law - Supra

20
21 Positions of the parties

22 Futurewise argues that the County’s LAMIRDs violate the GMA because they exceed the
23 boundaries of the built environment present in 1990, do not contain logical outer boundaries
24 (LOBs), and some fail to have any qualifying development.⁶² Futurewise points to 23
25 LAMIRDs which it asserts have overly broad boundaries and include land that was
26 undeveloped or used for rural/natural resource uses in 1990.⁶³ Futurewise, with Exhibit 26,
27 provides recommended LOBs.
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32 ⁶¹ Dry Creek HOM Brief, at 15.

⁶² Futurewise HOM Brief, at 24-25

⁶³ *Id.* at 25.

1 Futurewise points to the Straits LAMIRD, which it asserts that the County has attempted to
2 connect, or string together, developed areas.⁶⁴ Futurewise points to six additional LAMIRDs
3 which it contends do not even qualify as a LAMIRD because they had no development in
4 1990 or consisted of uses/lot sizes inconsistent with LAMIRD designation.⁶⁵ Futurewise,
5 with Exhibit 94, points out the undeveloped nature of these areas.
6

7 Futurewise contends that the County's justification for the LOBs – lack of land based
8 needed for growth in the western portion of the County and post-1990 development – do not
9 comply with the requirements set forth in the GMA for LAMIRDs.⁶⁶
10

11 Dry Creek points to Lairds' LAMIRD West, alleging that less than 1 acre had more intensive
12 commercial development in 1990 and this LAMIRD's total vacant acreage is 35 times larger
13 than the GMA requires.⁶⁷ Dry Creek also points to Lairds' LAMIRD East and asserts that
14 development of the vacant acreage will amount to impermissible "outfill", with 1990
15 development limited to the central core.⁶⁸
16

17
18 In response, the County notes that Futurewise has challenged 23 of the County's LAMIRDs
19 on the basis that they have "overly broad boundaries," with the basis for this assertion
20 simply being a generalized claim that the LAMIRDs contain land that was undeveloped or
21 used for rural purposes in 1990.⁶⁹ The County contends that Futurewise has failed to
22 provide sufficient analysis and seeks to define the LAMIRDs based on its own preferred
23 boundaries.⁷⁰ In essence, the County states that although both Futurewise and Dry Creek
24 may prefer different boundaries than the ones selected by the County, they have failed to
25 demonstrate that the identified boundaries are clearly erroneous.
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27
28

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30 ⁶⁴ *Id.* at 26.

31 ⁶⁵ *Id.*

32 ⁶⁶ *Id.* at 26-27.

⁶⁷ Dry Creek HOM Brief, at 15.

⁶⁸ *Id.* at 16.

⁶⁹ County Response, at 25.

⁷⁰ *Id.* at 25-26

1 The County argues that the GMA provides flexibility in selecting the LOBs for LAMIRDs,
2 based on neighborhood character, physical boundaries, irregular boundaries, and the
3 provision of services, and does not mandate that these boundaries be defined entirely by
4 dwelling units or commercial structures in place in 1990.⁷¹ The County then goes on to
5 address the boundaries in several of its LAMIRDs to demonstrate that it has applied the
6 criteria contained in the GMA and established LOBs.⁷²
7

8 During the analysis of the LOBs, the County further notes that undeveloped lots may be
9 included within a LAMIRD and may have vested development rights, the determination as to
10 land uses is for the County to determine, and that LOBs are not applicable to Type 2
11 LAMIRDs.⁷³ The County also sets forth argument specific to the LAMIRDs challenged by
12 Dry Creek – Laird’s West and Laird’s East – essentially stating that Dry Creek’s analysis is
13 not supported by either its briefing or Futurewise’s, which it adopted.⁷⁴
14

15
16 In reply, Futurewise asserts that the LAMIRDs, via the aerial photographs contained in the
17 Record, speak for themselves.⁷⁵ In regard to the County’s contention that underground
18 infrastructure, roads, and other aspects of the built environment are not adequately shown
19 on the aerials, Futurewise argues these elements are evaluated in the County’s *LAMIRDs*
20 *Report* and the County cannot rely on qualify development that “might” be there.⁷⁶
21 Futurewise notes that the County’s arguments regarding Type 2 LAMIRDs is a
22 misapplication of the GMA as is its assertion that a LAMIRD is not required to comply with
23 the criteria set forth in the GMA.⁷⁷ Lastly, Futurewise similarly contends the County’s claim
24 the GMA has been amended to permit a county to designated oversized LAMIRDs is not
25 supported by the GMA or legislative history.⁷⁸
26
27

28
29 _____
30 ⁷¹ *Id.* at 26 (citing to RCW 36.70A.070(5)(d)(iv) – Logical Outer Boundaries).

31 ⁷² *Id.* at 26-31.

32 ⁷³ *Id.* at 28-31.

⁷⁴ *Id.* at 30-31.

⁷⁵ Futurewise Reply, at 13.

⁷⁶ *Id.* at 13-14.

⁷⁷ *Id.* at 14-15.

⁷⁸ *Id.* at 15.

1 Dry Creek submitted that all the County has done was simply created a report that justified
2 the existing 1995 areas of more intensive rural development and fails to demonstrate that
3 the outer boundaries of the LAMIRDs are based on GMA criteria.⁷⁹
4

5 Board Discussion

6 While the County notes that Futurewise has not met its burden of proof because it has not
7 specifically addressed each LAMIRD,⁸⁰ the Board notes that Futurewise prepared and
8 submitted to the County a detailed analysis of the 29 LAMIRDs at issue which is part of the
9 record of this case, and was attached to Futurewise's prehearing brief.⁸¹ The concerns
10 voiced by Futurewise in this analysis are based on violations of RCW 36.70A.070(5)(d)(iv)
11 and .070(5)(d)(v). Therefore, the Board may consider the arguments Futurewise made in
12 that letter as part of the record in this case. The County continues that, to the extent the
13 Board considers Futurewise's arguments, they are flawed because the County selected the
14 LOB in a manner consistent with the GMA. This Board has previously held (emphasis
15 added):
16
17

18 Fundamental to the establishment of a **LAMIRD** is the requirement that **it be**
19 **based upon "existing areas and uses" as established ... by the built**
20 **environment ...** Once that area and use determination has been made, **then**
21 **a logical outer boundary is to be established which *contains and limits***
22 ***expansion of those areas and uses* to appropriate infill within the logical**
23 **outer boundary.**⁸²

24 Therefore, when establishing a LAMIRD the County must FIRST identify the built
25 environment, as of July 1, 1990, so that it may be minimized and contained as required
26 under the GMA. In determining the built environment, the Board has stated:

- 27 • Vested rights does not equate to the built environment.⁸³

30
31 ⁷⁹ Dry Creek Reply, at 14-15.

32 ⁸⁰ Clallam County's Corrected Response Brief at 25-26.

⁸¹ IR 77, February 27, 2007 letter to Steve Gray, Clallam County Planning Manager.

⁸² *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c, FDO (June 30, 2000)

⁸³ *Anacortes v. Skagit County*, WWGMHB Case No. 00-2-0049c, Compliance Order (Jan. 31, 2002)

- 1 • The built environment includes those facilities which are manmade, whether
2 they are above or below ground.⁸⁴
- 3 • Subdivided or platted land, although occurring prior to 1990, which remains
4 undeveloped may not be considered part of the built environment as the
5 Legislature intended this term to relate to manmade structures.⁸⁵

6 Once the built environment has been identified, the County must establish the LOB for the
7 LAMIRD by considering the criteria set forth in RCW 36.70A.070(5)(d):

- 8 • The need to preserve the character of existing natural neighborhoods and
9 communities,
- 10 • Physical boundaries such as bodies of water, streets and highways, and land
11 forms and contours,
- 12 • The prevention of abnormally irregular boundaries, and
- 13 • The ability to provide public facilities and public services in a manner that does
14 not permit low-density sprawl.

14 Therefore, the Board will address each of the challenged LAMIRDs on this basis.

15 **SPDR LAMIRD 1 – Diamond Point:**

16 Futurewise’s objects to the inclusion of a large area in the northwest corner that was
17 undeveloped in both 1990 and 2005, most of which Futurewise asserts has environmental
18 limitations. Futurewise also objects because the LAMIRD includes several developed and
19 undeveloped five acre lots along the western boundary. According to Futurewise, both of
20 these areas do not meet the GMA LAMIRD criteria.⁸⁶

21
22
23 The alleged GMA violation stems from the inclusion of undeveloped land along the
24 periphery of the LAMIRD. Although aerial photographs clearly show these areas objected
25 to by Futurewise lacked 1990 development, the mapping also demonstrates that this area of
26 the LAMIRD is bounded by Miller Peninsula State Park. In fact, the County’s delineation of
27 the boundaries provides for a LAMIRD that encompasses the Diamond Point area in its
28 entirety with no further expansion of the area available due to the limitation of the Strait of
29 Juan de Fuca, Discovery Bay, and the state park. Although a boundary could be drawn that
30
31

32 ⁸⁴ *Anacortes v. Skagit County*, WWGMHB Case No. 00-2-0049c, FDO (Feb. 6, 2001)

⁸⁵ *Butler et al v. Lewis County* Case No. 00-2-0031c/99-2-0027c, FDO & CO (March 5, 2001).

⁸⁶ IR 77, at 2.

1 would exclude these undeveloped portions, the Board sees this as a LOB based on the
2 presence of physical boundaries. In addition, the Board notes that inclusion of these areas
3 within the LAMIRD would maintain the character of the existing neighborhood, which began
4 development as platted subdivisions in the 1960s and 1970s.

5
6 Therefore, the Board concludes that the Diamond Point LAMIRD satisfies the GMA's
7 designation criteria because it creates a LOB that is not irregular.
8

9 **SPRD LAMIRD 5 – SW Carlsborg:**

10 Futurewise argues that this area was almost entirely undeveloped in 1990, with large areas
11 currently still undeveloped, and, that land subdivided or platted prior to 1990 but not
12 developed in 1990 cannot be used to define the built environment.⁸⁷ The *LAMIRD Report*
13 specifically notes that the pre-1990 subdivisions and short plats, along with private roads
14 built to serve these areas, was considered as part of the “built [existing] environment” and
15 utilized to establish the LAMIRD’s boundaries.
16

17
18 As noted *supra*, the starting point for designating a LAMIRD is the minimization and
19 containment of *existing areas of more intensive rural development*, it is only after this area
20 has been identified that the LOB is established based on neighborhood character, physical
21 boundaries, non-irregular boundaries, and provision of services at a level that does not
22 permit low-density sprawl. Land subdivided or platted prior to 1990 which remains
23 undeveloped may not be considered “existing” development for the purpose of LAMIRD
24 designation. The County’s own aerial photograph of 1990 clearly shows the lack of a built
25 environment, with only a handful of buildings shown within the northern portion of the
26 LAMIRD. Although the 2005 aerial photograph shows an increase in development, it is not
27 at more than a rural level of intensity, nor was it in existence in 1990 as required by the
28 GMA for LAMIRD designation.
29
30
31
32

⁸⁷ IR 77, at 2-3.
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1 The Board concludes that the County's inclusion of undeveloped platted/subdivided lands
2 as part of the existing area for designation of the LOB of this LAMIRD was clearly
3 erroneous. Therefore, the SW Carlsborg LAMIRD does not comply with the designation
4 criteria set forth in the GMA.

5
6 **SPDR LAMIRD 6 – Dungeness Village:**

7 Futurewise concurs that historic development within the area qualifies the site as a LAMIRD
8 but voices concern about the LOB extending beyond the area developed in 1990, impacts
9 on the Dungeness River, and potential conflicts with agricultural activities.⁸⁸
10

11 As with the SW Carlsborg LAMIRD, the County states that platted but undeveloped land
12 was considered as part of the existing, built environment and utilized when establishing the
13 LOB. As noted *supra*, this is an erroneous definition of the GMA's terminology. Aerial
14 photographs within the *LAMIRD Report*, demonstrate that the core area of the LAMIRD was
15 developed in 1990, however, parcels in the north/north east section as well as the southern
16 portion were either not developed or development at a non-intensive level. In addition, the
17 Board further notes that the LOB for this LAMIRD is irregular in that the County extended
18 the LAMIRD southward, across a waterway that appears to define the 1990 boundary.
19
20

21 Therefore, because the County included undeveloped but platted/subdivided lands within its
22 definition of the existing, built environment and the LOB for this LAMIRD creates an irregular
23 boundary that does not adhere to a defined physical boundary, the Board finds that the
24 Dungeness Village LAMIRD does not comply with the designation criteria set forth in the
25 GMA.
26

27
28 **SPRD LAMIRD 7 – East Anderson:**

29 Futurewise notes that all of the area south of East Anderson Road and several large parcels
30 north of East Anderson Road were undeveloped in 1990, with the exception of three homes
31
32

⁸⁸ IR 77, at 3.
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1 in the southern area, and was primarily actively farmed fields. Futurewise contends that
2 these lands should be designated and zoned as agricultural lands.⁸⁹

3
4 As with other LAMRIDs being challenged, the County included subdivided/platted but
5 undeveloped parcels when considering the existing, built environment that needed to be
6 contained within a LAMIRD. Development that occurred after July 1990 cannot be utilized
7 as a basis for LAMIRD designation. In addition, the Board concurs with Futurewise in
8 regard to the large parcels of land located north of East Anderson Road as these parcels
9 were not only undeveloped in 1990, but remain so today. Inclusion of these parcels also
10 creates an irregular boundary as it does not follow the physical boundary established by
11 East Anderson Road.
12

13
14 The Board finds that the inclusion of the triangular section of land bounded on the south by
15 East Anderson Road and the steep bluffs on the north generally complies with the GMA.
16 However, because the County included undeveloped but platted/subdivided lands south of
17 East Anderson Road within its definition of the existing, built environment and the LOB for
18 this LAMIRD creates an irregular boundary that does not adhere to a defined physical
19 boundary, the Board finds that the East Anderson Road LAMIRD does not comply with the
20 designation criteria set forth in the GMA.
21

22
23 **SPRD LAMRID 8 – Lotzgesell:**

24 Futurewise contends that the LOB for this LAMIRD contains lots of 1 acre or greater that
25 were not developed in 1990 and many still remain undeveloped today. Futurewise also
26 notes that it appears the County drew the LOB to include large lots in order to connect
27 developed areas into a single LAMIRD.⁹⁰
28

29 Once again, the County continues its erroneous definition of existing, built environment and,
30 in doing so, has created an expansive 1,750 acre LAMIRD with parcels of 5 acres of more
31

32

⁸⁹ IR 77, at 3-4.

⁹⁰ IR 77, at 4.

1 located both north and south of Lotzgesell Road which remains undeveloped today.
2 Although the 1990 aerial photograph shows various subdivisions occurring, the land use
3 pattern delineates a clear divide between two areas – developed areas well north of
4 Lotzgesell Road and developed areas well south of Lotzgesell Road. As Futurewise
5 correctly noted, this Board has previously found that delineating a LOB so as to create an
6 “all inclusive” LAMIRD does not minimize and contain the existing areas and would allow the
7 development of a new pattern of low-density sprawl; the same situation occurs with the
8 Lotzgesell LAMIRD.⁹¹

10
11 The Board finds that the County has erroneously defined the 1990 existing area based on
12 undeveloped platted/subdivided land and has established a LOB that appears to connect
13 two areas that could serve as distinct LAMIRDS, thereby preserving the rural character of
14 the larger parcels that bisect the area. Because of this, the Board finds that the Lotzgesell
15 Road LAMIRD does not comply with the designation criteria set forth in the GMA.

16
17 **SDPR LAMIRD 9 – Dryke/Sherbourne Road:**

18 Futurewise argues several areas included within the boundaries of this LAMRID had no
19 development in 1990, therefore these areas do not meet GMA LAMRID criteria.⁹²

20
21 This LAMRID is actually comprised of two distinct areas. Dryke West – is a 8.77 acre site
22 with the portion west of McDonnell Creek Road currently developed with a mini-storage
23 facility which had already started to be developed in 1990. However, east of McDonnell
24 Creek Road is parcel of land that in both 1990 and 2005 remains undeveloped. Dryke East
25 – is a 49.23 acre site that is bisected by Highway 101. The 1990 aerial photograph shows
26 development north of the highway but not west of Pierson Road on the southern side of the
27 highway, which remains undeveloped in 2005. The two areas are approximately 2,500 feet
28 apart. From the *LAMIRD Report*, it appears that the boundaries for both the Dryke West
29
30

31
32 ⁹¹ *Island County Citizen's Growth Management Coalition v. Island County*, WWGMHB Case No. 98-2-0023, FDO (June 2, 1999).

⁹² IR 77, at 4.

1 and Dryke East areas were established based on pre-existing zoning as opposed to the
2 1990 existing, built environment. This is not a proper application of the GMA's criteria as
3 the first step in establishing a LAMIRD is the determination of 1990 development, not how
4 the land was zoned at that point in time. Furthermore, based on the aerial photographs,
5 land which was undeveloped in 1990 and remains undeveloped today currently is included
6 within both the Dryke West and the Dryke East areas with no basis for inclusion. The
7 inclusion of the large parcels does not provide for a LOB that follows a physical boundary
8 and create irregular borders for both LAMIRD areas.
9

10
11 Therefore, the Board finds that the Dryke/Sherbourne Road LAMIRD does not comply with
12 the designation criteria set forth in the GMA.

13
14 **PAPR LAMIRD 4 – Laird's Corner:**

15 Futurewise raises an issue in regard to areas included within this LAMIRD west of Laird
16 Road, asserting that it had little development in 1990.⁹³ Dry Creek argues extensively
17 about this LAMIRD, with the bulk of their argument based on permitted uses, but addressing
18 LOBs in context of this argument.⁹⁴ Like the Dryke/Sherborne LAMRID, this LAMIRD is
19 comprised of two distinct areas but the County does not denote the acreage for each. The
20 two areas are approximately 2,000 feet apart.
21

22
23 For Laird's West, Futurewise contends that all areas west of Laird's Road does not satisfy
24 GMA criteria; Dry Creek notes that there was a tavern, restaurant, grocery store, and single-
25 family residence on the land located bordered by Highways 101 and 112, Laird's Road, and
26 Granite Road. Based on the 1990 aerial photograph, lands west of Highway 112 which
27 bisects this section of the LAMIRD were forested in 1990 and areas north of Granite Road
28 appear to have both forest and grasslands. With the exception of the small pocket of
29 development bordered by Highways 101 and 112, Laird and Granite Roads, all other area of
30 Laird's West do not satisfy GMA criteria in regard to existing, built environment. In addition,
31

32

⁹³ IR 77, at 4.

⁹⁴ IR 35; Dry Creek HOM Brief, at 7-16.

1 given the defining features of the roadways surrounding this section of the LAMIRD, the
2 Board questions the physical boundaries selected by the County to delineate the LOB.

3
4 As for Laird's East, Dry Creek notes that parcels east of Dry Creek Road had no
5 development as of 1990 with development only existing on the central portion of the area
6 west of Dry Creek Road. Although unclear, the 1990 aerial photographs appear to support
7 this assertion with nothing in the County's analysis clearly denoting why Laird's East
8 contains several large undeveloped parcels or why, with the exception of the highway, the
9 boundary is drawn as it is and what justification is there for the irregular nature of the
10 boundary.

11
12 Therefore, the Board finds that the Laird' Corner LAMIRD – East and West - does not
13 comply with the designation criteria set forth in the GMA.

14
15 **PAPR LAMIRD 6 – Deer Park:**

16
17 Futurewise contends that not only has the County located Deer Park, a commercial
18 LAMRID, too close to the UGA but that it has included land undeveloped in 1990 as well as
19 resource lands within this LAMIRD. In addition, Futurewise notes that current uses are not
20 of the type principally designed to serve rural populations and that this area may potentially
21 be better suited for inclusion within Port Angeles's UGA.⁹⁵

22
23 This LAMIRD totals approximately 156 acres and is located along the eastern border of the
24 Four Seasons LAMIRD. The Deer Park LAMIRD includes a gravel pit within its northern
25 most area and while intensive in nature, does not require inclusion within a LAMIRD. The
26 1990 aerial photograph denotes development within the area of the gravel pit and along
27 Highway 101, which bisects the LAMIRD. All other areas were not developed but appear to
28 have been included within the area because these areas had been zoned Commercial.
29 Inclusion of land simply based on pre-existing zone does not comply with the GMA's criteria
30 in regard to the existing development as of 1990. The County also provides no basis for
31
32

⁹⁵ IR 77, at 5
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1 inclusion of land west of Deer Creek Road. In fact, it notes that the LAMIRD's boundary is
2 formed by Deer Creek Road while the map delineates it within the LAMIRD.

3
4 Therefore, the Board finds that the Deer Park LAMIRD does not comply with the designation
5 criteria set forth in the GMA.

6
7 **PAPR LAMRID 7 – Lake Farm:**

8 Futurewise contends that land located in the northwest and southwest corner of this
9 LAMRID was undeveloped in both 1990 and 2005 and therefore it does not qualify for
10 inclusion.⁹⁶

11
12 This residential LAMRID consists of 164 acres. As with prior LAMIRDS, the County
13 determined the existing area based on a definition that included platted/subdivision parcels
14 that were undeveloped in 1990, an erroneous application of the GMA's requirements for
15 LAMIRDS. As Futurewise noted, a large parcel of land was included in the northwestern
16 section which the County appears to have included so as to prevent an irregular boundary
17 or divergent zoning. From the record, the inclusion of this parcel actually creates the very
18 irregularity the County says it is attempting to avoid. This same situation appears to
19 develop in the southeaster corner. The Board notes the location of a water body within this
20 area of the boundary of the LAMIRD does not extend to this physical border but appears to
21 bisect four individual parcels.
22

23
24 Therefore, because the County utilized a definition of existing development that does not
25 reflect the 1990 built development and creates, in some areas, irregular boundaries that are
26 not supported by the record, the Board finds that the Lake Farm LAMIRD does not comply
27 with the designation criteria set forth in the GMA.
28

29
30 **WPR LAMIRD 2 - Bear Creek:**
31
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⁹⁶ IR 77, at 5.
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1 Futurewise asserts that this LAMRID includes both rural and resource lands (the Bear Creek
2 Campground) but it also includes parcels that are not within the LOB as shown in the 1990
3 aerial photograph. Many of these areas are located in environmentally sensitive
4 environments and are unsuited to subdivision or more intense development.⁹⁷
5

6 While the County *LAMIRD Report* declares that the LOB creation identifies a cohesive and
7 established neighborhood that existed in 1990, the 1990 aerial photograph reveals little
8 evidence of development at the western end (now identified as the Bear Creek Recreation
9 Area). The County's justification for inclusion of undeveloped lands is to allow for
10 commercial zoning outside of the region's sole UGA so that the area may attract
11 development opportunities. This is insufficient in light of the limitations the GMA places on
12 Type I LAMIRDs.
13

14
15 The eastern and southwestern portions of the Bear Creek LAMIRD clearly contain lands that
16 are not delineated predominately by the built environment. While the County is allowed to
17 address "physical boundaries such as bodies of water, streets and highways, and land
18 forms and contours," it appears the County went well beyond using physical boundaries in
19 an attempt to include additional undeveloped land. To the extent indicated, this LAMIRD is
20 non-compliant.
21

22
23 **WPR LAMIRD 3 - Sappho:**

24 Futurewise asserts that the level of development in 1990 shows that this area does not
25 meet the criteria for a RCW 36.70A.070(5)(d)(i) LAMIRD. Futurewise contends that the
26 GMA allows for other development options, such as commercial uses that serve the rural
27 area and forest products processing plants, in the rural area outside LAMIRDs and, that
28 there may be better options for this area since it does not qualify as a LAMIRD.⁹⁸
29
30
31
32

⁹⁷ IR 77, at 7.

⁹⁸ IR 77, at 8

1 The County's *LAMIRD Report* notes that Sappho was platted as a town site in the late
2 1890's. The area contained significant railroad facilities in the 1920's and was a center for
3 logging activities through the 1980's. It notes that that commercial use of this LAMIRD has
4 been well established. The LOB was drawn based on the Sol Duc River to the South,
5 Beaver Creek to the west and north, and steep hills to the east. Although it is difficult to
6 discern the built environment in the 1990 aerial photograph, Petitioners statement that
7 "[T]he level of development in 1990 shows that this area does not meet the criteria for a
8 RCW 36.70A.070(5)(d)(i) LAMIRD" can not by itself overcome the presumption of validity.
9

10
11 The Board finds that in light of the County's evidence of past development in this area,
12 Petitioners have not shown clear error in the designation of this LAMIRD.

13
14 **WPR LAMIRD 4 - Old Beaver:**

15 Futurewise contends that none of the area designated qualifies as a LAMIRD, with the area
16 consisting of a few residences on smaller agricultural parcels or rural lots, with the average
17 size of the lots just short of four acres. Futurewise asserts that the area is more suited for
18 rural zoning.⁹⁹
19

20 The County's *LAMIRD Report* notes that this area consists of homes from the 1970's and is
21 bounded by US 101 to the south, the Sol Duc River to the east, steep hills to the north and a
22 Type 5 stream to the west, which serve as the LOB. The 1990 map confirms that most of
23 the lots were built upon by that time, and in the absence of more compelling evidence from
24 the Petitioners, they have failed to demonstrate that the County's designation is clearly
25 erroneous.
26

27
28 **WPR LAMIRD 7 – Maxfield:**

29 Futurewise raises concern about the large, undeveloped parcels on the periphery of this
30 LAMIRD, specifically pointing to a parcel east of the Sol Duc River that was outside of the
31
32

⁹⁹IR 77, at 8.
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1 1990 and 2005 LOB. Futurewise contends that these lands should be excluded from the
2 LAMIRD.¹⁰⁰

3
4 The County's *LAMIRD Report* notes that this area originally developed as the town of
5 Shuwah in the early 1900's . Residential development dates back to the 1930's and 1960's.
6 With regard to the parcels as the southern tip of the LAMIRD, the County notes that they are
7 served by electric, communications, phone and water service. While the Petitioners express
8 concern over the presence of undeveloped parcels on the periphery of the LAMIRD, this
9 generalized concern, without more, is not sufficient to carry Petitioner's burden.
10

11 **WPR LAMIRD 8 – Whitcomb/Dimmel (WD):**

12 Futurewise concedes that some of this land qualifies as a LAMIRD but notes that 61 percent
13 is vacant and encompass an area that is outside of the small, developed area of lots that
14 qualifies as a LAMIRD. In addition, Futurewise notes that lands along the Sol Due River
15 and constrained and ill-suited for intense development that would be uncharacteristic of the
16 area.¹⁰¹
17

18
19 While the County *LAMIRD Report* notes that most of the lots that make up WD east were
20 established prior to July of 1978 and consists of fishing cabins and mobile homes that date
21 back to the 1960's and 1970's, there is no similar justification provided for the LOB of WD –
22 west. A review of the 1990 aerial photograph west of Highway 101 reveals no evidence of
23 the built environment, and no such evidence has been brought to the Board's attention.
24 Thus, in light of the 1990 aerial photograph, and in the absence of any justification from the
25 County that DW-west was characterized by the built environment in 1990, we find that that
26 portion of the LAMIRD was improperly included.
27
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¹⁰⁰ IR 77, at 8.

¹⁰¹ IR 77, at 8.

1 Therefore, the Board finds that the County's justification for inclusion of these undeveloped
2 lands, is insufficient in light of the limitations the GMA places on Type I LAMIRDs. See,
3 RCW 36.70A.070(5)(d)(i) and (iv).
4

5 **WPR LAMIRD 9 - Bogachiel Bridge:**

6 Futurewise argues that most of the land in this LAMIRD is vacant or occupied by single-
7 family homes and outbuildings on larger lots which are well outside the smaller, developed
8 lots that qualify as a LAMIRD immediately west of Highway 101 and east of Highway 101
9 along the Bogachiel River. Futurewise contends that these undeveloped and large lot
10 residential lots should be excluded from the LAMIRD. ¹⁰²
11

12
13 Once more the County recites that "[T]he LOB creation identifies a cohesive and established
14 neighborhood that existed as of 1990", a statement that we would give more credence if not
15 made in almost every instance.. Rather, the Board gives more weight to the County's
16 particularized claims, such as that "[T]he outer boundaries are delineated by the Bogachiel
17 Estates and Fishermans Hollow subdivisions which were platted in 1966. The 1990 aerial
18 photograph does in fact show some evidence of built environment. But, here again, while
19 the County is allowed to address "physical boundaries such as bodies of water, streets and
20 highways, and land forms and contours," in this case it appears the County went well
21 beyond using physical boundaries in an attempt to include additional undeveloped land.
22 Lands to the far west and in the southeast corner of this LAMIRD show no evidence of a
23 built environment existing in 1990.
24

25
26 To the extent indicated, this LAMIRD is non-compliant. The County must limit the LAMIRD
27 to the existing area or existing uses that were in existence in 1990. The County's
28 justification for inclusion of these undeveloped lands, is insufficient in light of the limitations
29 the GMA places on Type I LAMIRDs. See, RCW 36.70A.070(5)(d)(i) and (iv).
30
31
32

1 **WPR LAMIRD 10 – Three Rivers:**

2 Futurewise argues as that the three tourist commercial uses at the northern part of the
3 intersection of La Push and Mora Road qualifies as a LAMIRD as well as the Quillayute
4 River Resort. However, Futurewise notes that the balance of the land is either vacant, large
5 lot residential development, or a park and boat launch, thereby failing to qualify for inclusion
6 in a LAMIRD.¹⁰³
7

8 The Board concurs with Futurewise’s assessment of this LAMIRD. The County has
9 included large lots of land that show no sign of development in the 1990 aerial photograph.
10 It is not clear what “neighborhood character” the LOB is intended to maintain on large
11 undeveloped parcels of land. Aside from the three tourist commercial uses at the north part
12 of the intersection of La Push and Mora Road which qualify as a LAMIRD and the Quillayute
13 River Resort which qualifies as an RCW 36.70A.070(5)(d)(ii) LAMIRD the balance of the
14 land is either vacant, large lot residential development, or a Washington State Department
15 of Fish and Wildlife park and boat launch and does not qualify for inclusion in this LAMIRD.
16
17

18 **WPR LAMIRD 11 - Quillayute River:**

19 Futurewise concedes that some of the land included within this LAMIRD qualifies for such a
20 designation, but that most of the land is vacant or developed with single-family homes and
21 outbuildings on lots larger than five acres, which are well outside the area east of Richwine
22 Road which qualifies as a LAMIRD.¹⁰⁴
23

24 Again, the County bases its justification for the LOB in this LAMIRD on the existence of “a
25 cohesive and established neighborhood that existed as of 1990.” This neighborhood is not
26 evident in the 1990 aerial photograph.
27
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¹⁰³ IR 77, at 10

¹⁰⁴ IR 77, at 10

1 Thus, aside from the area to the east of Richwine Road, which appears to have been clearly
2 identifiable and contained and possesses a logical boundary delineated predominately by
3 the built environment, the remainder of this area does not qualify as a LAMIRD.
4

5 **WPR LAMIRD 12 - Quillayute Airport:**

6 Futurewise asserts that the Quillayute Airport is a permitted rural use and, therefore, do not
7 need to be included in a LAMIRD. Futurewise further contends that inclusion of the airport
8 within a LAMIRD will actually encourage incompatible development, contrary to RCW
9 36.70.547. Futurewise notes that the area does have industrial uses which could satisfy
10 LAMIRD criteria.¹⁰⁵
11

12 The presence of the Quillayute Airport in the 1990 aerial photograph is clearly identifiable
13 and contained and where there is a LOB delineated predominately by the built environment.
14 The County notes that the LOB is based on pre-existing commercial and industrial uses and
15 well as the airport safety zones, all of which serve as the LOB. The Board agrees with the
16 County's assessment. Futurewise provides no authority for its position that airports are a
17 rural use. Its objection that airports do not belong in LAMIRDs is not founded in the GMA
18 nor does it refute the County's basis for defining the boundaries of this LAMIRD.
19
20

21 The Board finds that Futurewise has not carried its burden of proof with regard to this
22 LAMIRD.
23

24 **WPR LAMIRD 13 - Quillayute Prairie:**

25 Futurewise argues that land included within this LAMIRD continues to be used for
26 agricultural and forestry, with approximately 72 percent being vacant. In addition,
27 Futurewise notes the land is at rural residential densities of one dwelling unit per five or
28 more acres with two exceptions and, therefore, none of the land in this area qualifies as a
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¹⁰⁵ IR 77, at 10-11
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1 LAMIRD. Futurewise further notes that the area is close to the Quillayute Airport and a
2 LAMIRD designation may create incompatible uses.¹⁰⁶

3
4 The County notes in reference to the Quillayute Residential zoning, “[B]y 1990 this desired
5 residential expansion had not yet occurred. While lack of pre-existing development resulted
6 in the downsizing of several thousand acres throughout the WPR, retaining certain areas
7 within [LOBs] for desired infill is also appropriate.” This is one of the few areas where the
8 County does not recite its refrain regarding the cohesive and established nature of the
9 neighborhood that existed in 1990.

10
11 These factors, combined with the fact that the 1990 aerial photograph does not support that
12 this is an area delineated predominately by the built environment, indicates that the County
13 clearly erred in designating this area as a LAMIRD.

14
15 **WPR LAMIRD 14 - Little Quillayute Prairie:**

16
17 As they did with the Quillayute Prairie LAMIRD, Futurewise contends that none of this area
18 qualifies as a LAMIRD because it was both used for (in 1990) and continues to be used for
19 agricultural and forestry uses. Futurewise notes that 86 percent of the land is vacant and
20 that residential density is at 1 du/5 acre or more, with one exception.¹⁰⁷

21
22 For the Little Quillayute Prairie LAMIRD, just as with the Quillayute Prairie LAMIRD, the
23 County noted that, in reference to the Quillayute Residential zoning, “By 1990 this desired
24 residential expansion had not yet occurred. While lack of pre-existing development resulted
25 in the downsizing of several thousand acres throughout the WPR, retaining certain areas
26 within [LOBs] for desired infill is also appropriate.” The 1990 aerial photograph reveals little
27 development.

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¹⁰⁶ IR 77, at 11.

¹⁰⁷ IR 77, at 11-12.

1 The Board finds that this LOB does not meet the standards of RCW 36.70A.070(5)(d)(iv)
2 and that the County clearly erred in designating this area as a LAMIRD.

3
4 **PAPR LAMIRD 9 – O’Brien:**

5 Futurewise asserts that maps from both 1990 and 2005 show the land west of O’Brien Road
6 consists of rural uses - a campground, rural residential properties, and farm fields. In
7 addition, Futurewise notes some of the land east of O’Brien Road is also undeveloped for
8 LAMIRD uses and therefore, the LAMIRD’s boundary must be adjusted to comply.
9

10 The Board notes that the existing car racing track and the pattern of pre-90 existing
11 development makes it difficult to draw a LOB. However, extending the LOB to existing
12 roads takes in large pieces of undeveloped property that were undeveloped in 1990 and
13 were still undeveloped in 2005. In a similar situation, the Board said:
14

15 The four factors to be considered in drawing a [LOB] for the residential
16 LAMIRD must be applied within the limitations imposed RCW
17 36.70A.070(5)(c)(i) to contain or otherwise control rural development; and
18 within the overall directive to “minimize and contain the existing areas or uses
19 of more intensive rural development” found in RCW 36.70A.070(5)(d)(iv). That
20 is, the factors are not to be construed as a basis for significantly expanding the
21 area beyond the built environment, which must “predominate”. As the County
22 staff assessment points out, a chief concern is the creation of sprawl. The
23 creation of a [LOB] is not a justification for adding rural lands when those lands
24 significantly expand the potential for more intensive rural development
25 because this would not “minimize and contain” more intensive rural
26 development...However, “outfill” or the inclusion of larger tracts of land on the
27 periphery of the built environment is of major concern as adding to, rather than
28 minimizing and containing, more intensive rural development. (footnotes
29 eliminated)¹⁰⁸

30 Here, the LOB creates large areas of “outfill”, and the built environment does not
31 predominate. Therefore, the Board concludes that the LOB in this LAMIRD does not comply
32 with RCW 36.70A.070(5)(d)(iv).

¹⁰⁸ *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002(Compliance Order – LAMIRDs and Lot Aggregation , November 30, 2007) at 17,18, 19.

1 **PAPR LAMIRD 10 - The Bluffs:**

2 While Futurewise contends that it understands this LAMIRD is largely built out, the parcel
3 size and 2005 Build-Out map shows that there are both large lots and undeveloped lots on
4 the margins of the LAMIRD. Futurewise recommends these lots be taken out of the
5 LAMIRD so they are not further subdivided, creating more lots inconsistent with rural
6 Clallam County.¹⁰⁹
7

8 The County's *LAMIRD Report* aerial photo of this LAMIRD shows a subdivision that was
9 largely built out in 1990 with some sparsely developed areas on southeast leg of the
10 subdivision.¹¹⁰ The LAMIRD report states that the boundaries of the LAMIRD are formed by
11 the Strait of Juan de Fuca on the north and on the south and west by large Class II
12 wetlands. The report also points out that only two parcels are available in the LAMIRD for
13 subdivision, and they are 2.2 and 5.1 acres, and already contain a dwelling unit.¹¹¹ The
14 Strait and Class II wetlands are natural features that form a LOB that does not add large
15 areas of "outfill". Here, the built environment predominates and is contained.
16
17

18 The Board finds that the designation of the Bluffs LAMIRD is not a clearly erroneous
19 violation of RCW 36.70A.070 (5)(d)(iv).
20

21 **SPR LAMIRD 1 -Crescent Beach:**

22 Futurewise agrees that the developed area of the "Crescent Beach and RV Park" makes
23 sense as a LAMIRD. However, Futurewise contends land to the west does not meet the
24 LAMIRD criteria because it is characterized by rural resident and vacant land and, due to
25 extensive critical areas, is poorly suited to intense development. Futurewise recommends
26 these areas be taken out of the LAMIRD.
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32 ¹⁰⁹ Exhibit 77 at 6.

¹¹⁰ County's LAMIRD Report at Map PAPR LAMIRD 10

¹¹¹ Id. at 1 and 2.

1 The Board notes that there is no evidence in the record suggesting that any of the parcels
2 questioned by Futurewise are not part of the recreational aspect of this LAMIRD. Even
3 though two sections of the LAMIRD are separated by a broad expanse of beach, the Strait,
4 Crescent Beach Road, and the Salt Creek Recreation along with the fact that all seven
5 parcels included within this LAMIRD are in common ownership, appears to establish a LOB.
6

7 Although the GMA permits new development of small-scale recreational or tourist uses,
8 such uses may not include new residential development (RCW 36.70A.070(5)(d)(ii)). The
9 RNC zoning that the County has applied to the LAMIRD permits a wide variety of uses,
10 including residential. Therefore, although the common ownership of parcels justifies the
11 boundaries of this LAMIRD, the RNC zoning allows for more than tourist-related uses and
12 therefore is non-compliant with the GMA. The boundaries of this LAMIRD would be
13 acceptable if the uses in the LAMIRD were limited to the types of uses, size, scale, and
14 intensity of the uses that exist in the LAMIRD today, which are typical of a Type 2 LAMIRD.
15 While the County's LAMIRD report says that the uses in the LAMIRD are limited to tourist
16 uses, the LAMIRD's RNC zone allows a wide variety of uses, including residential uses,
17 which RCW 36.70A.070 (5)(d)(ii) prohibits. It appears that the Clallam County zoning code
18 does not have a zoning designation that appropriately limits the designation of Type 2
19 LAMIRDs. Because the RNC designation of this LAMIRD allows for more than tourist-
20 related uses, the Crescent Beach LAMIRD does not comply with RCW 36.70A. 070(5)(d)(ii).
21
22
23

24 **SPR LAMIRD 3 - Lyre River:**

25 Again, Futurewise agrees that the recreational vehicle park qualifies as a LAMIRD, but
26 notes that this LAMIRD also includes many large residential parcels and large undeveloped
27 lots which do not qualify under either RCW 36.70A.070(5)(d)(i) or (ii).¹¹² Futurewise
28 recommends these areas be taken out of the LAMIRD.
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¹¹² Index 77, at 6.
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1 The 1990 and the 2005 aerial photo shows large areas of vacant land between the two
2 developed small scale tourist commercial areas at the ends of the LAMIRD and large
3 undeveloped forested area at the edge of the LAMIRD. The area is zoned RNC which
4 allows for a wide variety of commercial¹¹³ uses as well as single-family dwelling units
5 potentially changing the character of this LAMIRD characterized by rural commercial tourist
6 uses. The County uses the criteria set out in RCW 36.70A.070 (5)(d)(ii) for analysis of this
7 LAMIRD, asserting that the area is primarily dominated by the recreational tourist uses of a
8 park and a campground.¹¹⁴ While these uses are appropriate for a Type 2 LAMIRD, the
9 RNC zoning, which allows for more than just small-scale recreation uses, including
10 residential uses, which are not allowed in Type 2 LAMIRDs.
11

12
13 Therefore, the Board finds that the Lyre River LAMIRD does not comply with the RCW
14 36.70A.070 (5)(d)(ii)..
15

16 **SPR LAMRID 6 - Hoko River West:**

17 While Futurewise agrees that the subdivided small lots qualify as a LAMIRD, there are
18 several large residential or undeveloped lots that are outside the LOB and should be
19 excluded from the LAMIRD.
20

21 The Board acknowledges that vacant parcels should not add large areas of vacant land or
22 “outfill “to reach LOBs. However, in this situation, the Strait, a state park, a river, and
23 highway form obvious LOBs. Also, there are only a few vacant parcels of land left, and one
24 has been purchased for a state park. In this LAMIRD, the built environment predominates.
25

26
27 Based on the foregoing, the Board finds the designation of the Hoko River complies with
28 RCW 36.70A.070 (5)(d)(iv).
29

30 **SPR LAMIRD 7 – Straits:**
31
32

¹¹³ Clallam County’s LAMIRD Report, SPR LAMIRD Lyre River at 1, 2, and 3.

¹¹⁴ Ibid at 2 and 3.

1 Futurewise agrees that the subdivided and developed small lots qualify as a LAMIRD, but
2 contends that the County uses several large undeveloped lots to attempt to string this large
3 LAMIRD together. Futurewise argues, citing to *ICCGMC v. Island County*, this Board has
4 previously held that including large lots within the LOB of a LAMIRD to connect the
5 developed areas into one LAMIRD violated the GMA. Therefore, Futurewise contends
6 these lots should be excluded to bring the LAMIRD into compliance with the GMA.¹¹⁵
7

8 The Board acknowledges Petitioner's comment about the vacant land separating the
9 development in this LAMIRD, and how the Board has held in the past and *supra* that vacant
10 land cannot be used to string LAMIRDs together. However, here, the amount of vacant land
11 is small and limited in development potential. Also, from the aerial photos, it is difficult to
12 discern actual development in 1990. Additionally, the Board agrees with the County that the
13 boundaries of forest lands on either side are logical.
14

15
16 The Board concludes that the designation of the Straits LAMIRD is not a clearly erroneous
17 violation of RCW 36.70A.070 (5)(d)(iv).
18

19 **SPR LAMIRD 8 – Bullman:**

20 While Futurewise agrees that the subdivided small lots qualify as a LAMIRD, it notes that
21 there are several large, undeveloped parcels that are outside the LOB. According to
22 Futurewise, these parcels are across roads and create an irregular boundary inconsistent
23 with RCW 36.70A.070(5)(d)(iv) and should be excluded from the LAMIRD.
24

25 The County's LAMIRD report states that this LAMIRD consists of an old subdivision dating
26 back to the 1930s, a small hotel, and several large vacant parcels. The County's
27 explanation for including the large, vacant parcels are that local circumstances make it
28 necessary to provide for residential development for areas experiencing minimal growth.
29 However, local circumstances cannot trump the goals and requirements of the GMA. As
30 this Board noted in our discussion of the O'Brien LAMIRD, *supra*, citing to *1000 Friends v.*
31
32

¹¹⁵ Index 77, at 7.
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1 *Futurewise*, “The creation of a [LOB] is not a justification for adding rural lands when those
2 lands significantly expand the potential for more intensive rural development because this
3 would not “minimize and contain” more intensive rural development...”

4
5 The Board finds that while the existing subdivision and commercial uses would qualify as a
6 LAMIRD, the addition of large areas of vacant land does not comply with RCW 36.70A.070
7 (5)(d)(iv).
8

9 **SPR LAMIRD 9 - Camp Hayden:**

10 *Futurewise* argues that the two residential parcels on the eastern end of this LAMIRD that
11 do not qualify as a LAMIRD, rather these parcels are rural uses. *Futurewise* recommends
12 the parcels be excluded from the LAMIRD based on the built environment and the GMA.
13

14 *Futurewise* does not object to Salt Creek RV Park which is located within the LAMIRD.
15 From the aerial photographs it appears that some sort of development had begun on the
16 eastern end of this development in 1990. It is not clear what type of development exists
17 there today from the 2005 aerial photograph. The County’s *LAMIRD Report* also indicates
18 that the parcel contained a minimart and restaurant in 1990. While the County appears to
19 have analyzed this LAMIRD under Type 2 criteria, it is zoned RNC, which includes a wide
20 range of uses. This LAMIRD also appears to have included a range of uses in 1990 that
21 may not have been strictly tied to recreational uses. Therefore, the RNC zoning is not
22 inappropriate in this case.
23
24

25 The Board notes that the County cannot rely on the zoning in 1990. However, based on lack
26 evidence in the record as to the type of uses that were in existence on the LAMIRD’s
27 eastern edge in 1990, the Board finds that the designation of this LAMIRD is not a clearly
28 erroneous violation of RCW 36.70A.070(5)(d)(iv).
29
30

31 **WPR LAMIRD 1 – Snider:**
32

1 While Futurewise agrees that the subdivided small lots on the east end of this LAMIRD may
2 qualify, it notes that there are several large undeveloped and large residential parcels that
3 are outside the LOB and should be excluded from the LAMIRD.

4
5 The 1990 and 2005 aerial photographs and MapWPLAMIRD1-b depicting parcel size and
6 build-out show a very limited area of development both in 1990 and in 2005. This LAMIRD
7 include large areas of undeveloped land on the edges of the LAMIRD. The GMA was
8 amended to provide the opportunity for the County to designate LAMIRDs to recognize and
9 contain areas of existing higher intensity rural development. Again, local circumstances
10 and findings in RCW 36.70A.011 do not change the requirements of RCW
11 36.70A.070(5)(d).
12

13
14 The Board concludes that the Snider LAMIRD's boundaries are drawn to establish large
15 areas of "outfill" that do not comply with RCW 36.70A. 070 (5)(d)(iv).
16

17 **Conclusion:** The Board finds the following LAMIRDs compliant, for the reasons set forth
18 above:

- 19 SPDR LAMIRD 1 – Diamond Point
- 20 WPR LAMIRD 3 – Sappho
- 21 WPR LAMIRD 4 - Old Beaver
- 22 WPR LAMIRD 7 – Maxfield
- 23 WPR LAMIRD 12 - Quillayute Airport
- 24 PAPER LAMIRD 10 - The Bluffs
- 25 SPR LAMIRD 6 - Hoko River West
- 26 SPR LAMIRD 7 – Straits
- 27 SPR LAMIRD 9 - Camp Hayden

28 The Board finds the following LAMIRDs non-compliant for the reasons and to the extent set
29 forth above:

- 30 SPRD LAMIRD 5 – SW Carlsborg
- 31 SPDR LAMIRD 6 – Dungeness Village
- 32 SPRD LAMIRD 7 – East Anderson
- SDPR LAMIRD 8 – Lotzgesell
- SDPR LAMIRD 9 – Dryke/Sherbourne Road
- PAPER LAMIRD 4 – Laird's Corner

1 PAPR LAMIRD 6 – Deer Park
2 PAPR LAMIRD 7 – Lake Farm
3 WPR LAMIRD 2 - Bear Creek
4 WPR LAMIRD 8 – Whitcomb/Dimmel
5 WPR LAMIRD 9 - Bogachiel Bridge
6 WPR LAMIRD 10 – Three Rivers
7 WPR LAMIRD 11 - Quillayute River
8 WPR LAMIRD 13 - Quillayute Prairie
9 WPR LAMIRD 14 - Little Quillayute Prairie
10 PAPR LAMIRD 9 – O’Brien
11 SPR LAMIRD 1 -Crescent Beach
12 SPR LAMIRD 3 - Lyre River
13 SPR LAMIRD 8 – Bullman
14 WPR LAMIRD 1 – Snider

15 Petitioners have not demonstrated that there is a risk of development vesting in the non-
16 compliant LAMIRDs during the period of remand. However, the Board would be willing to
17 entertain a motion for the imposition of invalidity in the future if the rate of growth and the
18 issuance of development permits within these LAMIRDs demonstrates that the continued
19 validity of these LAMIRDs or their LOBs would substantially interfere with the goals of the
20 GMA.

21 **B. RURAL DENSITIES**

22 ***Legal Issue No. 8 (Futurewise Issue 1): Whether the County’s failure to prohibit maximum***
23 ***rural densities of less than one dwelling unit per five acres outside of Limited Areas of More***
24 ***Intensive Rural Development (LAMIRDs) in Section 20(E), and failure to review and revise***
25 ***the comprehensive plan and development regulations to eliminate rural densities of less***
26 ***than one dwelling unit per five acres outside of Limited Areas of More Intensive Rural***
27 ***Development (LAMIRDs), violates RCW 36.70A.020 (1-2, 8-10, 12), 36.70A.040,***
28 ***36.70A.070, 36.70A.110, 36.70A.120, 36.70A.130, and 36.70A.177? The challenged***
29 ***comprehensive plan provisions include 31.02.260, Rural growth; Sequim-Dungeness***
30 ***Regional Plan 31.03.020, Comprehensive Plan map designations; Sequim-Dungeness***
31 ***Regional Plan 31.03.270, Rural land – Policies; Sequim-Dungeness Regional Plan***
32 ***31.03.340, Sequim-Dungeness Regional Plan 31.03.415, Dungeness-Kitchen Dick Road***
neighborhood; Sequim-Dungeness Regional Plan 31.03.415, Miller Peninsula
neighborhood; Sequim-Dungeness Regional Plan 31.03.425, Palo Alto-Chicken Coop
neighborhood; Sequim-Dungeness Regional Plan 31.03.445, Happy Valley-Bell Hill
neighborhood; Sequim-Dungeness Regional Plan 31.03.465; Dungeness-Jamestown
neighborhood; Sequim-Dungeness Regional Plan 31.03.475, Dungeness Valley
neighborhood; Sequim-Dungeness Regional Plan 31.03.485, Agnew neighborhood; Port

1 Angeles Regional Plan 31.04.220, Rural land – Inventory and analysis; Port Angeles
2 Regional Plan 31.04.225, Rural and resource land use designations, purpose and
3 designation criteria; Port Angeles Regional Plan 31.04.230 Rural land – Policies; Port
4 Angeles Regional Plan 31.04.440, Dry Creek neighborhood; Straits Regional Plan
5 31.05.250, Rural land use goals in the Eastern Straits; Western Regional Comprehensive
6 Plan 31.06.110, Rural land – Classifications. The challenged comprehensive plan map
7 designations include: Rural with a density of one dwelling per acre, Rural-Moderate with a
8 density of one dwelling per 2.4 acres, Rural-Low with a density of one dwelling unit per 4.8
9 acres, Rural Character Conservation which allows densities as high as one dwelling unit per
10 2.4 acres, and Rural Character Conservation (RCC3 and RCC5) which allow densities as
11 high as one dwelling unit per 2.4 acres. The challenged zones include the CCC 33.10.030
12 Rural Moderate (R2) and CCC 33.10.035 Western Region Rural Moderate (RW2) zones
13 (with a maximum density of one dwelling unit per 2.4 acres); the CCC 33.10.040 Rural (R1),
14 CCC 33.10.045A Rural Suburban Community (RSC) [outside LAMIRDs], CCC 33.10.045
15 Western Region Rural (RW1) zones (with a maximum density of one unit per acre) CCC
16 33.10.050 Rural Character Conservation 5 (RCC5) (with a maximum density of one dwelling
17 unit per 4.8 acres), CCC 33.10.060 Rural Character Conservation 3 (RCC3) with a
18 maximum density of one dwelling unit per 2.4 acres, CCC 33.10.070 Rural Low Mixed
19 (RLM) with a maximum density of one dwelling unit per 2.4 acres.

20 Applicable Law - Supra

21 Positions of the parties

22 The crux of Petitioners argument with this legal issue is that densities of greater than 1 du/5
23 acre is not rural and therefore must be prohibited outside of UGAs or LAMIRDs.¹¹⁶

24 Petitioners point to previous Board holdings to support their claim that this Board has found
25 densities of greater than 1 du/5 acre are not rural and that it should do the same in this
26 case.¹¹⁷ Petitioners go on to cite to previous cases and agricultural reports as to the size of
27 farms and their viability, asserting that five acres or more is needed to ensure viability and
28 rural character.¹¹⁸ Petitioners further contend the sprawling, low-density development
29 permitted by the County results in habitat loss and fragmentation, increase costs to
30 taxpayers due to higher levels of public facilities and services, and increased traffic.¹¹⁹

31 _____
32 ¹¹⁶ Futurewise's Prehearing Brief, at 9-10.

¹¹⁷ *Id.* at 10.

¹¹⁸ *Id.* at 10 – 12.

¹¹⁹ *Id.* at 15-16.

1 In addition, Petitioners point to the potential impact on both water quantity and quality by
2 allowing development within the rural area at urban-level densities – noting impervious
3 surface coverage and its impact on salmon habitat, groundwater recharge, and shellfish
4 beds.¹²⁰ Petitioners contend impacts will create water supply problems and pollution from
5 septic tanks.¹²¹
6

7 Petitioners further contend that the County is effectively allowing urban density in the rural
8 area contrary to .110 which states that urban growth is to be located within urban areas.¹²²
9 And, according to Petitioners, because land is more readily available within the rural area,
10 developers will select these areas before building within the UGAs.¹²³ Petitioners point out
11 that the existing patterns of land use within the County, with approximately 54 percent of
12 lots within the R2 and RW2 zoning districts being 4.81 acres of larger, support a finding
13 which limits rural densities to greater than 1 du/5 acre.¹²⁴
14
15

16 In response, the County states that, based on the GMA’s goals and requirements and local
17 circumstances, rural densities ranging from 1 du/2.4 acres to 1 du/20 acres complies with
18 the GMA and that densities of greater than 1 du/2.4 acres are only permitted within
19 LAMIRDS.¹²⁵ The County argues that Futurewise’s complaint is based on a “perceived *per*
20 *se* maximum rural density of 1 du per 5 acres outside LAMIRDs”, which is contrary to the
21 Court’s ruling in *Viking Properties* which found that “such density rules are inappropriate
22 under the GMA.”¹²⁶ According to the County, to force them to abide by bright-line density
23 rules would require the County to disregard priorities and policies, developed in the context
24 of local circumstances; that it has deemed critical.¹²⁷ The County points to several goals
25 and tenants of the GMA - including affordable housing, fostering traditional rural lifestyles
26
27
28

29 ¹²⁰ *Id.* at 12-14.

30 ¹²¹ *Id.* at 16-17.

31 ¹²² *Id.* at 18-19.

32 ¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ County Response, at 12.

¹²⁶ *Id.* (citing to *Viking Properties v. Holm*, 155 Wn. 2d 112 (2005)).

¹²⁷ *Id.* at 12-13.

1 and economies, protecting property rights, and avoiding development pressure on open
2 space and environmentally sensitive areas – all which are supported by the variety of rural
3 densities selected by the County.¹²⁸ The County further notes that these interests are
4 addressed and supported by its *Rural Lands Report* and *LAMIRDs Report*.¹²⁹
5

6 The County goes on to contend that such densities help protect rural character, do not allow
7 for urban-like growth or encourage sprawl, and help to protect environmental resources.¹³⁰
8

9 According to the County, rural character is protected when uniform zoning is avoided and
10 the opportunity to live and work in the rural area is preserved.¹³¹ The County contends
11 that its rural densities, ranging from 1 du/2.4 acres to 1 du/20 acres, do not amount to
12 urban-like growth or sprawl and, no where in the GMA are rural lands required to be
13 primarily used for agricultural purposes as Futurewise asserts.¹³² The County counters
14 Futurewise’s claims on environmental harm by alleging that Futurewise’s analysis “ignores
15 myriad factors that affect the health” of environmental resources and “ignores the extensive
16 efforts undertaken by Clallam County to protect the environment.”¹³³ Specifically, the
17 County points to (1) its Critical Areas Ordinance, which was based on Best Available
18 Science including the reports cited by Futurewise; (2) its Clustering Zoning Provisions; and
19 (3) its vast undeveloped forest resource lands – all of which it asserts mitigate the impacts
20 of impervious areas.¹³⁴
21
22

23 In Reply, Futurewise contends it is not asking the Board to impose a bright line rule
24 regarding rural densities, rather it is asking for the Board to evaluate local circumstances,
25 such as average farm size, and evidence in the Record to determine whether the rural
26 densities established by the County comply with the GMA.¹³⁵ Futurewise further notes that
27
28

29 ¹²⁸ *Id.* at 13-14.

30 ¹²⁹ *Id.* at 15.

31 ¹³⁰ *Id.* at 15-19.

32 ¹³¹ *Id.* at 15-16.

¹³² *Id.* at 16-18.

¹³³ *Id.* at 19.

¹³⁴ *Id.* at 21.

¹³⁵ Futurewise Reply, at 6-7, 11.

1 any ruling from the Board should strive for consistency, specifically in relationship to
2 neighboring counties.¹³⁶

3
4 Futurewise asserts that the County's Clustering Zoning provisions do not limit impervious
5 coverage, nor does the County's CAO adequately mitigate for impacts created by increased
6 impervious surface.¹³⁷ Futurewise argues that despite the County's argument that it
7 properly balanced goals, the GMA statutory requirements control over goals when a conflict
8 exists.¹³⁸ According to Futurewise, the GMA mandates that urban growth not be permitted
9 within the rural areas and densities of greater than 1 du/5 acres provide for urban-type
10 development.¹³⁹

11
12 Finally, Futurewise argues that the County cannot really use pre-existing non-compliant
13 sprawl to support its rural zoning.¹⁴⁰ Futurewise notes that although the county does feature
14 a mix of rural densities in its rural areas, it also has small areas of pre-existing urban growth
15 in its rural lands which the GMA seeks to limit the spread of "these islands of sprawl."¹⁴¹
16 Futurewise asserts that the GMA would be eviscerated if the County could cite to urban
17 sprawl and call it rural as a means of justifying its spread throughout the rural area.¹⁴²

18 19 20 Board Discussion

21 With this legal issue, Futurewise is asking the Board to determine *what is the appropriate*
22 *density within the rural areas of Clallam County.* The County asserts that Futurewise's
23 "challenge is premised upon a perceived *per se* maximum rural density of 1 du per 5 acres
24 outside LAMIRDs" that the County equates to the same type of bright line rule found to be
25 inappropriate under the GMA in *Viking Properties*; the Board reads Futurewise's argument
26 to be a bit more. Although Futurewise does contend that the County's rural densities
27
28

29
30 ¹³⁶ *Id.* at 7.

¹³⁷ *Id.* at 8-9.

¹³⁸ *Id.* at 9

¹³⁹ *Id.* at 9-11

¹⁴⁰ *Id.* at 12.

¹⁴¹ *Id.*

¹⁴² *Id.*

1 should be no greater than 1 du/5 acres outside of LAMIRDs,¹⁴³ it does so by not solely
2 pointing to a number that previous Board cases articulated to be rural in nature but by
3 providing support based on the GMA's and the County's own definitions as to rural
4 character and the existing character of Clallam County's rural areas.
5

6 RCW 36.70A.011 states the Legislature's intent in regards to Rural Lands and includes both
7 land use patterns and a vision that preserves the rural nature of the area with consideration
8 given to rural-based economies and traditional rural lifestyles, including small-scale
9 employment; the operation of rural-based agricultural, commercial, recreational, and tourist
10 businesses that are consistent with existing and planned land use patterns; preservation of
11 fish and wildlife habitat and open space; and enhancing a rural sense of community and
12 quality of life. Rural character is also defined by the GMA and seeks to provide open
13 space, natural landscape and vegetation predominate over the built environment; foster
14 traditional rural lifestyles, rural-based economies, and opportunities to both live and work in
15 rural areas; provide visual landscapes that are traditionally found in rural areas and
16 communities; protect land for wildlife and for fish and wildlife habitat; reduce the
17 inappropriate conversion of undeveloped land into sprawling, low-density development; and
18 protect natural surface water flows and groundwater and surface water recharge and
19 discharge areas.¹⁴⁴
20
21
22

23 Title 31 of the County's Code, the County's Comprehensive Plan, at CCC 31.02.050(31)
24 defines Rural Character with many of the same attributes as the GMA's definition. The
25 County provides for several rural zoning districts, each with the stated maximum residential
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32 ¹⁴³ For the purpose of this issue, the term "rural lands" shall mean rural zoned lands outside of LAMIRDs. It does not include resource lands.

1 density¹⁴⁵ and lot size.¹⁴⁶ The County provides for a variety of densities, ranging from 1
2 du/acre to 1 du/20 acres, with lot sizes varying from 0.5 acres to 5 acres.¹⁴⁷

3
4 Futurewise sets forth an argument primarily based on farm size in Clallam County,
5 specifically in relationship to compatibility for agricultural uses; ground and surface waters
6 protection, in regards to impervious coverage and on-site sewage systems; preservation of
7 fish and wildlife habitat, including connectivity and fragmentation; and existing land use
8 patterns within Clallam County.¹⁴⁸

9
10 Average Farm Size

11 Futurewise points two court cases – *Diehl v. Mason County*¹⁴⁹ and *Tugwell v. Kittitas*
12 *County*¹⁵⁰ – which concluded certain lots sizes were urban because they were “incompatible
13 with the primary use of land for the production of food.”¹⁵¹ Futurewise cites to the County’s
14 *Rural Lands Report*, finding that the County’s own statistics demonstrate mixed farms within
15 the County require more than five acres because existing farms range from 4.8 to 157.90
16
17
18
19

20 ¹⁴⁵ Density is based on gross acre of land, including road right-of-ways. CCC 33.03.010(28).

21 ¹⁴⁶ CCC Chapter 33.10 Rural Zones

22 ¹⁴⁷ CCC Chapter 33.10, Rural Zones. Smaller lots – 0.5 acres – are provided under Cluster Subdivision provisions

23 ¹⁴⁸ Futurewise HOM Brief, at 8-21.

24 ¹⁴⁹ 94 Wn. App. 645; 972 P.2d 543 (1999). In *Diehl*, a case challenging various decisions of this Board, the
25 Court of Appeals reviewed residential densities permitted within rural areas to determine if they were, by
26 themselves, inadequate under the GMA. Specifically, lots that ranged from one acre to 2.5 acres.
27 Futurewise relies on the Court’s holding which found “[T]hese densities would allow for urban-like
28 development, not consistent with primarily agricultural uses” to conclude that densities of 1 du/2.5 acre or
29 more are urban. However, the *Diehl* Court was analyzing these densities based on language that has since
30 been amended and prior Board decisions which had concluded lots of 1 to 2.5 acres in size are “*per se* urban.”

31 ¹⁵⁰ 90 Wn. App. 1; 951 P.2d 272 (1997). In *Tugwell*, a LUPA challenge involving the rezone of 115 acres of
32 agricultural land to residential, the Court of Appeals upheld the rezone but when reviewing the evidence
presented for justification noted that the Tugwell’s property was surrounded by non-conforming parcels of less
than 20 acres which were “not large enough to accommodate agricultural activities” and that the “changing
character of neighboring property had an effect on their farm.” Futurewise reads *Tugwell* as holding that
parcels of less than 20 acres in size, especially very small lots of less than three acres, are urban because
they are too small to farm and thus incompatible with the primary use of agricultural production.

¹⁵¹ This incompatibility language comes from the GMA’s definition for urban growth, RCW 36.70A.030(18), with
Futurewise arguing that if a permitted density would make the land incompatible for agricultural production,
then it must fall under the definition of urban as opposed to rural.

1 acres, with an average of 25.26 acres.¹⁵² The County contends that small-scale farming
2 (both livestock and horticulture) is occurring on parcels smaller than five acres, noting a few
3 small farms – lavender, organic vegetables, and llamas.¹⁵³
4

5 With both *Diehl* and *Tugwell* and the County's own data, Futurewise is essentially arguing
6 that if a lot is too small to farm then it is *per se* urban. To determine something is *per se*
7 urban based on a single factor is to essentially establish the bright line that the *Viking Court*
8 found inappropriate. Although the Board concedes that the average farm size relates
9 strongly to the visual rural character of the area, the ability of land to viably produce
10 agricultural products is not, in and of itself, the defining factor in regards to whether
11 something is rural. The purpose of rural lands is not primarily the production of agricultural
12 products as Futurewise asserts based on the GMA's definition of urban growth. As noted
13 *supra*, rural areas provide much more than solely agricultural land. The ability of land to be
14 productive is more appropriate in the context of agricultural lands.
15
16

17 It is the County's own data that is more persuasive. While it may be true in isolated
18 incidents that farming is occurring on parcels of less than five acres, the data contained
19 within their Rural Lands Report (SPDR-4, PAPR-4, SPR-4, and WPR-4) generally
20 demonstrate that with very few exceptions, the typical Clallam County farm is greater than
21 five acres. Given the County's reliance on farming to sustain traditional rural lifestyles and
22 rural-based economies within the *Rural Lands Report*, the size of existing, operating farms
23 is persuasive when determining what the character of the County's rural areas is. Based
24 on statistics provided by Futurewise and the County itself, farms within Clallam County
25 average 25 acres, with farms generally being five acres or greater.
26
27

28 Existing Land Use Patterns

29 Futurewise asserts that the County's existing land pattern within the rural areas
30 demonstrates that the character of the area represents parcels greater than 4.8 acres.
31
32

¹⁵² Futurewise HOM, at 11 (citing Index 65).

¹⁵³ County Response, at 15-16 (citing to Rural Lands Report at 24-25)

1 Futurewise primarily bases this conclusion on two zoning districts – R2 and RW2 – finding
2 that within these zones, approximately 54 percent of the acreage were comprised of parcels
3 greater than 4.8 acres.

4
5 The GMA specifically references land use patterns as a defining feature with rural lands.
6 RCW 36.70A.011 directs a county to “foster land use patterns” and 36.70A.030(15) further
7 provides the rural character is comprised of land use patterns. The Board notes that the
8 County has eight rural zoning districts outside of LAMIRDs, with approximately 52 percent of
9 all parcels within these zones being greater than 4.81 acres. The Board further notes that
10 16 percent of all rural parcels range between 1 and 2.4 acres and 10 percent of all parcels
11 being greater than 20 acres.¹⁵⁴ Therefore, in regard to the land use pattern of Clallam
12 County’s existing rural area, more than half of the County’s rural land is comprised of
13 parcels greater than 4.81 acres each.
14

15
16 Surface and Ground Waters

17 • *Impervious Coverage*

18 Futurewise points to the impact of increased impervious coverage on ground and surface
19 waters and critical areas, with particular attention to salmon habitat, referring to several
20 studies that have found impervious coverage within a drainage base over 10 percent has
21 adverse impacts.¹⁵⁵ The Board notes that with a few exceptions, the County does not
22 provide stated limitations as to the total amount of impervious coverage within its rural areas
23 despite the fact that the GMA requires protection of these waters.¹⁵⁶
24
25
26
27

28 ¹⁵⁴ *Rural Lands Report, Table CC-2.* The Board did not consider parcels of 1 acre or less, since the courts
29 have determined that parcels this size are urban in nature. *Quadrant Corp. v. Central Puget Sound Hearings*
30 *Board*, 154 Wn.2d 224, 110 P.3d 1132 (2005).

31 ¹⁵⁵ Futurewise HOM Brief, at 12-14 (citing *The Cumulative Effects of Urbanization on Small Streams in the*
32 *Puget Sound Lowland Ecoregion*, May, et. al. (5-10 percent coverage); *Impervious Surface Coverage: The*
Emergence of a Key Environmental Indicator, Arnold & Gibbons (10-20 percent coverage); *Literature Review*
and Analysis: Coastal Urbanization and Microbial Contamination of Shellfish Growing Areas, Glasoe & Christy
(10-25 percent coverage)).

¹⁵⁶ Impervious coverage is limited by required setbacks (all zones) and open space (clustered developments).
RCW 36.70A.030(15) and .070(5)(c) references protection of ground and surface water resources.

1 While the Board does not deny that an increase in impervious surface may have an impact
2 on the movement of water, related critical areas, and the overall visual character of an area,
3 Futurewise's own calculations demonstrate that lot sizes of one acre to five acres would
4 have impervious coverage of 5 to 13 percent, with only lots of one acre in size or less falling
5 below what the studies have determined is a baseline for impacts. And, even though the
6 CCC permits lots of one acre or less within rural zones, gross density is still required to
7 range between 1 du/2.4 acre and 1 du/4.8 acre, with clustered developments required to set
8 aside a percentage of land in open space.¹⁵⁷ Therefore, the potential impact would be that
9 three percent or less of the County could be developed with an impervious coverage in
10 excess of 10 percent; the minimum percentage Futurewise asserts will create adverse
11 impacts.
12

13
14 In addition, what Futurewise fails to address are the studies' relationship of impervious
15 coverage to drainage basins and whether the County's zoning districts that would permit lot
16 sizes of one acre or less would result in impervious coverage within a single drainage basin
17 in excess of 10 percent. Futurewise also fails to acknowledge that over 80 percent of the
18 County is forested, represented by both Commercial Forests (56 percent) and the Olympia
19 National Park (28 percent),¹⁵⁸ with the cited studies seeking to maintain 65 percent forest
20 coverage within a drainage basin.
21

22
23 • *Other Factors*

24 Futurewise asserts that higher densities equate to rural sprawl, which they define as
25 development on lots of two to ten acres, an increase in traffic, greater demand for water,
26 habitat loss and fragmentation, higher development costs, adverse impacts on water
27 resources due to faulty on-site septic systems, including shorelines and shellfish production,
28 and a redirection of growth from urban areas.¹⁵⁹ While these may be realistic impacts of
29
30

31
32 ¹⁵⁷The R2 zone permits 1 du/2.4 acre density and, with cluster development, the RLM and RCC3 zones permit the same.

¹⁵⁸ *Rural Lands Report, Table CC-1.*

¹⁵⁹ Futurewise HOM Brief, at 15-18.

1 development, Futurewise did little more than provide conclusory statements to support their
2 assertion.

3
4 The Board finds that Futurewise has adequately demonstrated that the rural character of
5 Clallam County, specifically its visual landscape and farm-based economy, is dominated by
6 lots of greater than five acres in size. With such a large percentage of the County's existing
7 land use pattern at a parcel size of 4.81 acres and farms within the County averaging 25
8 acres, the existing rural landscape supports a finding that the rural character of Clallam
9 County is a rural density of 1 du/5 acre.
10

11 The Board recognizes the GMA mandate for Clallam County to provide for a variety of rural
12 densities and permits it discretion in making planning decisions. However, the densities the
13 County selects must be *rural* in nature. The importance of rural lands and their character is
14 specific, looking to land use patterns for establishing rural character and seeking to foster
15 traditional rural lifestyles and economies that a County has historically provided. By
16 authorizing densities that do not reflect the existing landscape or economy of the area, the
17 County has failed to maintain the traditional rural lifestyles of the residents of Clallam
18 County as required by the GMA.
19
20

21 Although Futurewise has presented other arguments, such as impervious surface and water
22 quality impacts, habitat loss and fragmentation, and development costs, the Board finds that
23 Futurewise failed to adequately support these assertions by argument or the Record
24 presented to the Board. The Board does not discount the importance of the issues raised
25 by these assertions as they reflect components required by the GMA itself; it is just that the
26 Petitioners failed to sufficiently support the assertions made.
27
28

29 **Conclusion:** Based on the foregoing analysis, the Board finds that the following rural
30 zoning district within Clallam County violates RCW 36.70A.110, 36.70A.020(1) and,
31 36.70A.020(2) because these zoning districts permit urban, not rural, densities outside of an
32 urban growth area:

1 CCC 33.10.030 R2 zone: Permits 1 du/2.4 acres
2 CCC 33.10.035 RW2 zone: Permits 1 du/2.4 acres
3 CCC 33.10.040 R1 zone: Permits 1 du/acre
4 CCC 33.10.045 RW1 zone: Permits 1 du/acre

5 The Board further finds all comprehensive plan policies and map designations that relate to
6 these zoning districts are themselves non-compliant, pursuant to RCW 36.70A.070, which
7 requires the plan, including the future land use map, to be an internally consistent
8 document.

9
10 The Board notes that although other zoning districts (CCC 33.10.050 (RCC5), 33.10.060
11 (RCC3), and 33.10.070 (RLM)) may, subject to an approved application for a clustered
12 residential development, permit densities similar to those provided for in the zoning district
13 the Board finds to be non-compliant, the base density of these zoning district ranges
14 between 1 du/5 acres and 1 du/10 acres and, with the provision of open space for these
15 types of development, must be maintained.
16

17 **C. ACCESSORY DWELLING UNITS**

18
19 ***Legal Issue No. 9 (Futurewise Issue 2): Whether the County's failure to prohibit attached***
20 ***accessory dwelling units at densities greater than one dwelling units per five acres outside***
21 ***urban growth areas and outside LAMIRDS in Section 24(B), and failure to review and revise***
22 ***comprehensive plan provision 31.02.280, Housing, and CCC 33.50.040, to eliminate***
23 ***detached accessory dwelling units at densities greater than one dwelling units per five acres***
24 ***outside urban growth areas and outside LAMIRDS violates RCW 36.70A.020(1-2), RCW***
36.70A.070(5), RCW 36.70A.110, and RCW 36.70A.130?

25 Applicable Law - *Supra*

26 Positions of the parties

27
28 Futurewise contends that under the County's existing regulations, it permits accessory
29 dwelling units (ADUs) at densities greater than 1 du/5 acre outside of a UGA or LAMIRD
30 without distinguishing between attached or detached units.¹⁶⁰ In doing so, the County
31 effectively permits ADUs in the rural area without counting either type as a dwelling unit for
32

¹⁶⁰ Futurewise HOM Brief, at 21.
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1 purposes of density calculations because these units impact water consumption, sewage
2 outflow, impervious surface, and rural character.¹⁶¹ Futurewise notes this Board has
3 addressed this issue in the past and has held that ADUs should be prohibited if the unit
4 would result in density greater than 1 du/5 acre.¹⁶²

5
6 In response, the County asserts that Futurewise is once again relying on bright line rules:
7 (1) a detached ADU constitutes a separate unit of density and (2) rural densities are
8 restricted to 1 du/5 acres outside of LAMIRDs.¹⁶³ The County concedes that this Board has
9 found similar detach ADU ordinances non-compliant, but that those findings were based on
10 the imposition of bright line rules which are not mandated by the GMA and interfere with the
11 County's ability to balance GMA goals to reflect local priorities.¹⁶⁴

12
13 The County argues that its ADU ordinance is the result of an extensive public process which
14 found it provided for, among other things, affordable housing opportunities which included
15 housing for guests or on-site caregivers.¹⁶⁵ The County further notes that its regulations
16 ensure that ADUs remain subordinate and incidental to the primary use of the property; that
17 detached units must comply with the minimum lot size of the underlying zone; and that
18 design standards protect rural aesthetics.¹⁶⁶

19
20
21 In reply, Futurewise contends that although the County provided an extensive analysis of its
22 ADU ordinance, it failed to explain why ADUs should be allowed sprawl densities or why the
23 County's failure to adequately prevent unregulated ADUs justifies its action.¹⁶⁷

24
25 Board Discussion

26
27
28
29 ¹⁶¹ *Id.* at 21-23.

30 ¹⁶² *Id.* at 22-23 (citing to *Yanisch v. Lewis County*, WWGMHB Case No. 02-2-0007c, FDO (Dec. 11, 2002);
Friends of the San Juans, et al v. San Juan County, WWGMHB Case No. 03-2-0003c, FDO (April 17, 2003)).

31 ¹⁶³ County Response, at 35-36.

32 ¹⁶⁴ *Id.* at 36.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 37.

¹⁶⁷ Futurewise Reply, at 13.

1 On January 10, 2008 the Board denied the County's motion to dismiss this issue. However
2 that was a 2-1 decision of the Board. One of the Board members voting to deny the motion
3 is no longer on the Board. As a result there a split among the current Board members
4 regarding the timeliness of this challenge. Because pursuant to RCW 36.70A.320 the
5 County's ordinance is presumed to be valid upon adoption and there is not a majority of
6 Board members in agreement that this matter is properly before the Board, the County's
7 provisions regarding ADUs, challenged in Futurewise's Issue 2, maintains is presumption of
8 validity.
9

10
11 **Conclusion:** The Board could not reach agreement as to its authority to address an
12 unamended portion of the County's regulations. Therefore, the County's ADU ordinance
13 maintains its presumption of validity.
14

15 **D. Urban Density**

16 ***Legal Issue No. 12 (Futurewise Issue 5):*** *Whether the County's failure to require a*
17 *minimum density of four dwelling units per net acre within urban growth areas and outside*
18 *extensive critical areas in Section 21, and failure to review and revise comprehensive plan*
19 *provision 31.03.315 Adoption of City of Sequim Comprehensive Plan Housing Policy HUP-2*
20 *and the Port Angeles Regional Plan Urban Low Density (LD) designation, the CCC*
21 *33.13.010 Urban Residential High Density (URH) zone, the CCC 33.13.020 Urban*
22 *Residential Low Density (URL) zone, and the CCC 33.19.030 Sequim Urban Residential – I*
23 *[S(R-I)] zone where the maximum density is less than four dwelling units per net acre within*
24 *urban growth areas and outside extensive critical areas violates RCW 36.70A.020(1-2, 8-*
25 *10), RCW 36.70A.110, and RCW 36.70A.130?*

26 Applicable Law - *Supra*

27 Positions of the parties

28 Futurewise argues that the County, with several zoning districts within the urban area that
29 allow densities as low as 2 du/acre is not avoiding sprawl as mandated by the GMA.¹⁶⁸
30 According to Futurewise, this Board has previously stated that urban densities should be at
31 least 4 du/acre unless there is some analysis or rationale for permitting lower densities and
32

¹⁶⁸ Futurewise HOM Brief, at 29.
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1 that the County should have amended the portions of its Comprehensive Plan and
2 development regulations to reflect this.¹⁶⁹ Futurewise further points to Sequim CP Housing
3 Policy HUP-2 which explicitly encourages half-acre lots.¹⁷⁰ Futurewise goes on to note the
4 adverse impacts of low urban densities, including pollution, traffic and transit, open space,
5 and natural resources.
6

7 The County asserts that like Futurewise's argument as to rural densities, Futurewise is once
8 again seeking the imposition of a bright line rule; here, that rule would be a minimum of 4
9 du/acre within urban areas.¹⁷¹ The County contends that the *Whatcom County* case cited
10 by Futurewise was a benchmark and not a rigid standard, with jurisdictions permitted to
11 deviate when reasons to do so exist.¹⁷²
12

13
14 The County further argues that challenged zoning districts have justification for lower
15 density, such as lack of urban services, critical areas, and existing development patterns,
16 and only represent a very small percentage of the overall land base within the UGA.¹⁷³ In
17 addition, the County asserts that although some of the zoning districts set density at 2
18 du/acre, that others, such as the Urban Low Density and Very Low Density zone (ULD/VLD)
19 in Port Angeles have incentives for Transfer of Development Rights which allow up to 9
20 du/acre.¹⁷⁴
21

22
23 In reply, Futurewise specifically abandons their argument in regards to the Port Angeles
24 ULD/VLD zoning district.¹⁷⁵ However, as to the circumstances that the County asserts
25 justification for lower densities within the urban area, Futurewise contends that these
26 circumstances, with the exception of critical areas, are contrary to the goals and
27
28

29 ¹⁶⁹ *Id.* (citing to *Futurewise v. Whatcom County*, WWGMHB Case No. 05-2-0031, FDO, at 25-26 (Sept. 30,
30 2005)) and 31.

31 ¹⁷⁰ *Id.* at 30.

32 ¹⁷¹ County Response, at 51.

¹⁷² *Id.* at 51-52.

¹⁷³ *Id.* at 52-53.

¹⁷⁴ *Id.* at 54.

¹⁷⁵ Futurewise Reply, at 16

1 requirements of the GMA.¹⁷⁶ And, in fact, Futurewise notes that the provision of urban
2 services will be facilitated with denser development.¹⁷⁷

3
4 Board Discussion

5 The County generally provides for seven urban zones (Chapter 33.13 Urban Zones) with
6 additional zoning designations provided for the Sequim UGA (Chapter 33.19) and the
7 Carlsborg UGA (Chapter 33.20). With this issue, only three of the County's urban zoning
8 districts are currently before the Board – Urban Residential High Density (URH) CCC
9 33.13.010, Urban Residential Low Density (URL) CCC 33.13.020, and Sequim Urban
10 Residential -1 (S(R-1)) CCC 33.19.030.¹⁷⁸ Futurewise asserts that the density of 2du/acre
11 permitted by these zones amounts to low-density sprawl and points to various studies on
12 the costs and impacts of sprawl, noting increased costs, including those related to public
13 infrastructure, operational expenses, residential development, and land. From these
14 studies, Futurewise also asserts that low-density development will result in increased
15 pollution, long travel distances, and depressed rates of walking and transit use.
16
17

18 The Board notes its concern with all of the County's residential zoning districts, in that the
19 code provisions provide for a maximum residential density as opposed to a minimum.
20 Therefore, even though a zoning district sets density at 9 du/acre, development could
21 potentially occur at less than what has historically been deemed by the Hearings Boards,
22 and adopted by many jurisdictions, as an urban level of development – 4 du/acre.
23
24

25 Futurewise's argument is based on academic literature that sets forth the costs and impacts
26 of low-density sprawl, something that the GMA seeks to reduce. From this literature,
27 Futurewise gleans a 4 du/acre minimum urban density. However, Futurewise spends little
28

29
30 ¹⁷⁶ *Id.* at 16-18.

¹⁷⁷ *Id.*

31 ¹⁷⁸ With this issue, Futurewise specifically challenged only four zoning districts – Port Angeles Regional Plan
32 Urban Low Density designation, Urban Residential High Density (CCC 33.13.010), Urban Residential Low
Density (CCC 33.13.020), and Sequim Urban Residential -1 (CCC 33.19.030) – but then present argument
based on an additional zone – Urban Very Low Density. In their Reply Brief at 16, Futurewise specifically
abandons the Port Angeles Urban Low Density/Very Low Density designation.

1 time providing the requisite analysis for the Board and the Board does not see sprawl simply
2 as development at less-than-minimum-density; rather sprawl refers to development that,
3 under the GMA's regional planning framework, is at a low *relative* density and, a density that
4 may be *too costly to maintain*.

5
6 Futurewise has failed to provide the necessary analysis to justify its assertion that Clallam
7 County's urban residential densities must be a minimum of 4 du/acre in order to comply with
8 the GMA. Simply citing to varying academic studies without providing a comparative
9 analysis to the facts and circumstances that are reflected within Clallam County did not
10 provide the Board with the needed support.
11

12
13 This is not to say that the Board approves of urban densities which are substantially less
14 than the County's other urban densities, especially given the justification that the County
15 presents - existing residential lot sizes, distance to city services (e.g. sewer), the presence
16 of critical areas, and the proximity to a wastewater treatment facility. The Board has
17 previously stated that the presence of critical areas provides reasonable justification for
18 reduced density¹⁷⁹, however, the RCW 36.70A.110 (3) and RCW 36.70A.020 (1) seeks to
19 focus growth into UGAs so utilizing established residential land use patterns as a basis for
20 reduced densities is not a reasonable justification. The Board recognizes that in this Order
21 it concluded existing land use patterns assisted in establishing the appropriate rural density
22 for Clallam County. However, rural development is not the same as urban development. To
23 allow historic, sprawling land use patterns in and around urban areas to control future
24 development would simply negate the intent and purpose of the GMA itself – directing urban
25 growth into urban areas - in other words, for some areas sprawl would simply continue in
26 perpetuity.
27
28
29
30
31

32 ¹⁷⁹ *Futurewise v. Whatcom County and Goldstar Resorts, Inc.*, Case No. WWGMHB Case No. 05-2-0013
(Final Decision and Order, September 20, 2005) at 26.

1 The Board further concludes that although reduced densities adjacent to certain types of
2 essential public facilities, e.g. airports, may be warranted for safety reasons, reduced
3 densities based on a potential for future nuisance claims does not provide the same type of
4 support. Lastly, this Board, as well as the other Hearings Boards has found that RCW
5 36.70A.110(3) and RCW 36.70A.020(12) when read together mandate the provision of
6 urban services at the time of development within UGAs. As the Board has noted in previous
7 cases allowing new development to occur in a UGA prior to the availability of urban services
8 requires a delicate balance. Without urban services new development cannot achieve an
9 urban density. Alternately, new development at non-urban densities must not preclude the
10 eventual achievement of urban densities when urban services become available.”¹⁸⁰ Here,
11 both cities plan to have these areas achieve greater densities when services are available.
12 For the County to attempt to justify lower density development based on the City’s inability
13 to provide services to the area at the time of development, is a clear violation of the GMA.
14 Although the County did note that density would be modified upon the provision of urban
15 services, this is unlikely to happen as the land would have already been developed at
16 sprawling, low-density levels with little potential for re-development at more intense levels.
17
18
19

20 **Conclusion:** The Board finds and concludes that the County’s zoning districts within the
21 Sequim and Port Angeles UGAs which provide for a maximum residential density of 2
22 du/acre violates the RCW 36.70A.110(3), RCW 36.70A.020(1), (2) and (12). These zoning
23 districts are as follows:

24	CCC 33.13.010 URH	1 du/12,500 sq feet
25	CCC 33.13.020 URL	1 du/21,500 sq feet
26	CCC 33.19.030(1) S(R-1)	1 du/one-half acre

27
28 The Board further finds all comprehensive plan policies and map designations that relate to
29 this zoning districts are themselves non-compliant, pursuant to RCW 36.70A.070, which
30
31
32

¹⁸⁰ *Advocates for Responsible Development v. John Diehl*, WWGMHB Case No. 06-2-005 (Compliance Order on Sewer and Development Regulations – Sewer in the Belfair UGA, November 14, 2007)

1 requires the plan, including the future land use map, to be an internally consistent
2 document, specifically Sequim Housing Policy HUP-2.

3
4 The Board recognizes that lands constrained by critical areas may warrant lower densities,
5 but that the failure to provide urban services at the time of development, the presence of
6 essential public facilities, and the existence of sprawling, low-density development are not
7 sufficient justification for such a non-urban density.
8

9 **E. Urban Facilities and Services within the UGA**

10
11 ***Legal Issue No. 11 (Futurewise Issue 4): Whether the County's failure to prohibit the***
12 ***extension of urban services outside urban growth areas in Section 20(D), and failure to***
13 ***review and revise comprehensive plan provision 31.02.285, Public utilities, facilities and***
14 ***services, and Sequim-Dungeness Regional Plan 31.03.260, Rural land – Inventory and***
15 ***analysis, allows the extension of urban services outside urban growth areas in violation of***
RCW 36.70A.020(1-2, 9-10), RCW 36.70A.070, RCW 36.70A.110, and RCW 36.70A.130?

16 Applicable Law – Supra

17
18 Positions of the Parties

19 Futurewise argues that CCC.31.02.285(4)(b)[Policy No.7] allows public sanitary sewer
20 systems without meeting the requirements of RCW 36.70A.110(4) because the policy does
21 not require that the facility be financially supportable at urban densities or that the extension
22 not allow for urban development. Futurewise says this issue was not properly addressed
23 by Section 20(D) and CP provision 31.02.285 and Sequim –Dungeness Regional Plan
24 31.03.260 entitled Rural Land – Inventory and Analysis do not comply with GMA
25 requirements.¹⁸¹ In its Reply Brief, Futurewise abandons its challenge to Section 20.¹⁸²
26

27
28 The County responds that it acknowledges the statutory criteria and interprets is rural sewer
29 policy to be consistent with them. The County says that Futurewise does not identify any
30 non-compliant extension of sewer facilities to County rural lands or a capital facilities plan
31

32

¹⁸¹ Futurewise HOM Brief at 28 and 29.

¹⁸² Futurewise Prehearing Reply Brief at 16.

1 that does this. The County also argues that Futurewise challenge to Sequim-Dungeness
2 Regional Plan provision 31.03.260 does not cite the provision that requires amendment.
3 Further, the County explains that the County's policies regarding rural services apply
4 county-wide, so therefore apply in addition to the Sequim-Dungeness policies. The County
5 contends Futurewise has not met its burden of proof.¹⁸³
6

7 Board Discussion

8 The Board agrees with the County in regard to CCC 31.02.285(4)(b)(Policy 7). This policy
9 prohibits the extension of sanitary sewer lines except when on-site disposal systems provide
10 a threat or risk to public health. The policy needs to be read with CCC 31.02.285(4)(d)
11 (Policy 9) which says that if sanitary sewer systems extend into rural or resource lands or
12 an area of failing systems, the sewage lines extending from the urban area should be for
13 transmission only (tight-lines) and sized only to serve the area declared necessary. The
14 Board finds this policy responsible and compliant with RCW 36.70A.110(4).
15
16

17 The Board does not understand Futurewise's argument that the line should be supportable
18 at urban densities. To the contrary, the sewer lines should not be supportable at urban
19 densities, should not promote urban densities in rural and resource lands, and needs the
20 type of restrictions that the County has imposed.
21

22 The Board agrees with the County that CCC 31.02.285(4)(b) applies county-wide, and so
23 prohibits sewer extensions except under the conditions this provision imposes. While the
24 Board can see why Futurewise might be concerned about the lack of conditions imposed on
25 other urban services in rural areas this policy addresses, Futurewise has not presented its
26 concerns for the Board to address.
27
28

29 **Conclusion:** CCC 31.02.285(4)(b)(Policy 7) complies with the RCW 36.70A.110(4).
30 Futurewise has not carried its burden of proof that Policy CCC 31.02.285(4)(d) and Section
31
32

¹⁸³ County's Corrected Response Brief at 40, 41.
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1 D fail to comply with RCW 36.70A.020(1-2, 9-10), RCW 36.70A.070, RCW 36.70A.110, and
2 RCW 36.70A.130.

3
4 **Legal Issue No. 13 (Futurewise Issue 6):** *Whether the county’s failure to plan for sewer*
5 *service and other needed capital facilities and services to the Carlsborg urban growth area*
6 *in Section 20(C), and failure to review and revise the comprehensive plan to plan for sewer*
7 *service to the Carlsborg urban growth area and appropriate urban densities violates RCW*
8 *36.70A.020 (1-2, 12), RCW 36.70A.040, 36.70A.070, RCW 36.70A.110, and RCW*
36.70A.130?

9 Applicable Law - Supra

10
11 Positions of the parties

12 Futurewise asserts that the 2000 Capital Facilities Plan (CFP) for the Carlsborg UGA is
13 inadequate because it only “identifies the current state of, or lack of, capital facilities in the
14 area, and fails to identify a plan with financing for providing the necessary facilities and
15 services for an urban community.”¹⁸⁴ Futurewise contends that the County had an
16 opportunity to correct this deficiency during its update process and failed to do so.¹⁸⁵

17
18 Futurewise points to several problems with the 2000 CFP: (1) stormwater facilities –
19 handling and future funding; (2) maintaining police response time with increased
20 development; (3) park acreage – location and funding, and the most noticeable error (4) the
21 use of on-site septic system instead of sewer service, with includes future location and
22 funding.¹⁸⁶ Futurewise cites to *Durland v. San Juan County*, WWGMHB Case No. 00-2-
23 0062c, Compliance Order at 6-8 (Oct. 15, 2002) to support its assertion that the County’s
24 lack of planning for the expansion of sewer services and other urban services within the
25 UGA violates the GMA.¹⁸⁷

26
27
28 In response, the County contends that the crux of Futurewise’s argument stems for its
29 disregard of local circumstances and its belief that the GMA requires immediate conversion
30

31
32 ¹⁸⁴ Futurewise HOM Brief, at 31.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 31-32.

¹⁸⁷ *Id.* at 32-33.

1 from on-site septic system to sewer.¹⁸⁸ The County asserts that there is no legal authority
2 requiring a UGA to plan for sewer within their initial CFP, rather Futurewise is attempting a
3 one-size-fits-all approach.¹⁸⁹ The County notes that it is currently pursuant development of
4 a sewer facilities plan to enable Carlsborg to transition to sewer service in the future but, for
5 the present time, density is limited based on on-site septic needs.¹⁹⁰
6

7 The County further argues that the GMA allows CFPs and urban densities to be developed
8 in consideration of local circumstances, with Carlsborg being a small, unincorporated UGA
9 lacking in the necessary resources to facilitate conversion.¹⁹¹ . The County sets forth the
10 planning efforts its has engaged in since 1996 to provide for the necessary public facilities
11 and services, including wastewater solutions.¹⁹²
12

13
14 As for other public facilities cited by Futurewise, for example stormwater runoff, the County
15 contends that these have been evaluated but it was concluded that due to the soils within
16 the area no special facility was needed.¹⁹³ The County further asserts that police, fire, and
17 park land are adequately addressed within the CFP and Futurewise omits these facts.¹⁹⁴
18

19 In reply, Futurewise contends that the County's failure to address the issues of sewer
20 systems within its CFP is simply a failure in not just recognizing the problem but in dealing
21 with it.¹⁹⁵ Futurewise further notes that the studies conducted by the County have not
22 been implemented despite the fact they were developed prior to the adoption of the
23 challenged actions.¹⁹⁶ In addition, as to police services, Futurewise asserts that the
24 County's arguments demonstrate a basic misunderstanding and that the mere presence of
25
26
27

28 ¹⁸⁸ County Response, at 55.

29 ¹⁸⁹ *Id.* at 55-56

30 ¹⁹⁰ *Id.* at 56.

31 ¹⁹¹ *Id.* at 56-58

32 ¹⁹² *Id.*

¹⁹³ *Id.* at 58.

¹⁹⁴ *Id.* at 58-59.

¹⁹⁵ Futurewise Reply, at 19.

¹⁹⁶ *Id.* at 19-20.

1 an office does not equate to the presence of police officers at a volume sufficient to satisfy
2 adopted service standards.¹⁹⁷

3
4 Board Discussion

5 Carlsborg is an unincorporated UGA in a rural County. Providing the necessary urban
6 services for unincorporated UGAs is a difficult task, which the Board has recognized:

7 The task of creating a non-municipal UGA, that is, a UGA that does not
8 include a city or town, is difficult because of the necessity of providing urban
9 governmental services where there typically were none. If urban services can
10 be provided, a non-municipal UGA may be the best option for dealing with pre-
11 existing areas of growth ... The natural attractions and county goals place
12 significant pressures for increasing development in these areas, and the
13 increases in development in turn require appropriate levels of sewer, water,
14 stormwater management, and other urban services. Bringing necessary
15 services to these areas designated for urban levels of growth is a difficult
16 task.¹⁹⁸

17 **1. Lack of Sewers in the Carlsborg UGA**

18 Futurewise charges that the most egregious violation in regard to the Carlsborg UGA is the
19 lack of sewers. The County replies that no legal authority exists requiring the County to
20 provide sewers initially in the UGA, Futurewise's charge ignores local circumstances, and
21 the County is developing a plan to provide sewers to Carlsborg.

22 RCW 36.70A.110(1) states (in pertinent part),

23 Urban growth should be located first in areas already characterized by urban
24 growth that have adequate existing public facility and service capacities to
25 serve such development, second in areas already characterized by urban
26 growth that will be served adequately by a combination of both existing public
27 facilities and services and any additional needed public facilities and services
28 that are provided by either public or private sources, and third in the remaining
29 portions of the urban growth areas. ..

30 RCW 36.70A.030(20) defines "urban governmental services" or "urban services" to include:

31
32 ¹⁹⁷ *Id.* at 20.

¹⁹⁸ *Advocates for Responsible Development and John Diehl v. Mason County*, WWGMHB Case No. 06-2-0005 (Order Finding Noncompliance of Development Regulations to Protect Against Incompatible Development, May 14, 2007) at 7.

1 " those public services and public facilities at an intensity historically and
2 typically provided in cities, specifically including storm and sanitary sewer
3 systems, domestic water systems, street cleaning services, fire and police
4 protection services, public transit services, and other public utilities associated
5 with urban areas and normally not associated with rural areas.

6 Several goals of the GMA also pertain to this issue, including Goal 1 (Urban Growth), Goal 2
7 (Reduce Sprawl), and Goal 12 (Public Facilities and Services).¹⁹⁹

8
9 The Sewer Feasibility Study for the Carlsborg UGA concedes that public sewer is a
10 necessary service for a UGA.²⁰⁰ The Board has previously addressed whether septic tanks,
11 including community septic tanks are appropriate services for UGAs, and concluded that
12 under the GMA, septic systems, whether individual or community, are not considered "urban
13 services".²⁰¹

14
15 The County further argues that it has developed a sewer plan on how to provide sewer to
16 the UGA in the future and that should be adequate for a compliant UGA. RCW 36.70A.070
17 (3) requires (in pertinent part):

18
19 A capital facilities plan element consisting of: (a) An inventory of existing
20 capital facilities owned by public entities, showing the locations and capacities
21 of the capital facilities; (b) a forecast of the future needs for such capital
22 facilities; (c) the proposed locations and capacities of expanded or new capital
23 facilities; (d) at least a six-year plan that will finance such capital facilities
24 within projected funding capacities and clearly identifies sources of public
25 money for such purposes....

26 The County's analysis of the Carlsborg UGA discusses how PUD No. 1 in association with
27 the County is jointly sponsoring a sewer feasibility study for the purpose of establishing the
28 planning and cost for PUD, the County, and the community to decide whether the
29 development of a sewer system is appropriate.²⁰² The County's Sewer Feasibility Study for

30
31 _____
¹⁹⁹ The text of these provisions is set forth in Appendix B.

²⁰⁰ Sewer Feasibility Study for the Carlsborg UGA at 6.

²⁰¹ *Advocates for Responsible Development v. John Diehl*, WWGMHB Case No. 06-2-005 (Compliance Order on Sewer and Development Regulations – Sewer in the Belfair UGA, November 14, 2007)

²⁰² Clallam County's Urban Growth Area Analysis and 10-Year Review at 42.

1 the Carlsborg UGA (Feasibility Study) identifies the next steps that include the preparation
2 of a general sewer plan with estimates of population and sewer flows and evaluation of
3 sewer collection, treatment and disposal alternatives, and a funding program to describe the
4 funding sources and how the sewer systems' costs could be allocated.²⁰³ Clearly, Clallam
5 County is at the beginning stages of planning for a Carlsborg UGA sewer system and still
6 has no sewer CFP that meets the requirements of RCW 36.70A.070 (3).
7

8 Because the Clallam County cannot provide sewer service in the Carlsborg UGA, it also
9 cannot provide for urban densities in the UGA. Currently, the County allows for densities of
10 two units an acre. The Sewer Feasibility Report acknowledges the problems that allowing 2
11 du/acre densities without sewer are beginning to cause in the UGA:
12

13 On-site septic systems are not adequately treating sewage, which is passing
14 through the granular soils in the aquifer and nitrate concentrations in the
15 groundwater, forming the potable water supply, are rising enough to approach
16 or even exceed the maximum contaminant level (MCL) for drinking water.²⁰⁴

17 Early on in the implementation of the GMA, the Washington Department of Community,
18 Trade, and Economic Development (CTED) warned local governments on the costs of
19 providing sewers to low density development:
20

21 A cost of actually constructing and connecting to sewer is usually borne by
22 the homeowner. The main economic threshold is what is the homeowner then
23 becomes "what burden is the homeowner willing to pay?" Sewer providers
24 also bear additional costs for treatment at lower densities. Because of the
25 greater length of pipe per capita in low density areas, more infiltration and
greater treatment costs result from lower densities.²⁰⁵

26 The Feasibility Report also acknowledges the high cost of financing the sewer system in this
27 area of low density, including an alternative of running a sewer line from the City of Sequim,
28
29
30

31
32 ²⁰³ Id. at 89.

²⁰⁴ Sewer Feasibility Study for the Carlsborg UGA at 6.

²⁰⁵ The Art and Science of Designating Urban Growth Areas, Part II, Some Suggestions for Criteria and
Densities (Department of Community Development (now CTED), March 1992) at 16.

1 which might not be affordable for the low and moderate income residents of Carlsborg and
2 senior citizens, who make up a little over half of the Carlsborg's population.²⁰⁶

3
4 In *Campbell v. San Juan County*,²⁰⁷ this Board concluded that when considering whether an
5 area was "characterized by urban growth" for the purpose of determining the location of a
6 UGA in accordance with RCW 36.70A.110(3), densities of 1 du/acre could be considered
7 "characterized by urban growth". Nevertheless, the Board went on to say this about
8 appropriate urban densities in UGAs:
9

10 In the context of non-municipal UGAs, urban densities are especially important
11 because the County is creating an urban growth area where no city or town
12 exists. Allowing suburban densities in a new UGA has the very real potential
13 for the creation of sprawl. Therefore, even though land with existing suburban
14 densities may be included within a UGA, urban densities and uses must be
15 allowed on those lands in the future.

16 This Board has held that, as a rule of thumb, for urban growth areas to
17 accomplish sprawl reduction, residential densities of four units an acre are a
18 minimum urban density. Even so, in that same case, we said that
19 circumstances such as the need to protect critical areas or to protect public
20 health and safety make densities of less than four units an acre in UGAs a
21 compliant way in which to harmonize the sprawl reduction goal with other
22 GMA goals or requirements.²⁰⁸

23 Further, in a situation in Mason County, where the County allowed urban densities to occur
24 before sewers were provided, the Board held:

25 ...allowing new development to occur in a UGA prior to the availability of
26 urban services requires a delicate balancing of two principles. On one side of
27 the equation, the new development cannot be at urban densities because
28 urban services are not yet available. On the other side of the equation, new
29 development at non-urban densities must not preclude the eventual

29 ²⁰⁶ Feasibility Study at 77.

30 ²⁰⁷ *Stephen Ludwig v. San Juan County*, WWGMHB Case No. 05-2-0019c (Compliance Order, June 20,
31 2006), *Fred Klein v. San Juan County*, WWGMHB Case No. 02-2-0008(Compliance Order, June 20, 2006),
32 and *John Campbell v. San Juan County*, Case No. 05-2-0022c (Final Decision and Order, June 20, 2006).

²⁰⁸ *Stephen Ludwig v. San Juan County*, WWGMHB Case No. 05-2-0019c (Compliance Order, June 20,
2006), *Fred Klein v. San Juan County*, WWGMHB Case No. 02-2-0008(Compliance Order, June 20, 2006),
and *John Campbell v. San Juan County*, Case No. 05-2-0022c (Final Decision and Order, June 20, 2006) at
21. (Internal Citations Omitted)

1 achievement of urban densities when urban services become available.
2 Where a UGA is developed at non-urban densities and intensities due to a
3 lack of adequate urban services, then it is unlikely to ever become urban in
4 nature. Counties and cities need to ensure that new development which is not
5 yet served by urban services does not become permanent sprawl or
6 environmentally damaging if capital facilities planning assumptions do not
7 come to fruition or if growth does not occur when and how it was expected.²⁰⁹

7 Again, the Board has addressed this same situation in other Western Washington counties
8 and has found that all the parts of a capital facilities element must be in place for the
9 designation of a compliant UGA. In *Irondale Community Action Neighbors v. Jefferson*
10 *County*, this Board held:

11 However, having carefully considered all of the County's arguments and
12 rationale, we remain concerned about the Tri-Area Final UGA being
13 designated before adequate capital facilities planning for sewer, including
14 fiscal analysis of the ability to provide those facilities, the setting of urban level
15 of service standards and the adoption of development regulations that are
16 ready for implementation in the UGA are completed. We agree with the
17 Petitioners that these steps must be completed prior to designation to ensure
18 that development within the UGA will be urban in nature, that the UGA will be
19 efficiently served with urban levels of service and that the County and its
20 citizens can meet the financial obligations required for these urban facilities
21 and services at the level of service adopted by the County.²¹⁰

21 **Conclusion:** The County concedes that UGAs need sewers. The County provides for
22 development with only septic tanks, both individual and community, in the Carlsborg. The
23 Board has found that septic tanks are not an urban level of service. The County has not
24 adopted a capital facilities plan compliant with the provisions of RCW 36.70A.070(3) for
25 providing sewers. The County cannot provide sewer service to enable urban development
26 at the time of development. Therefore, CCC Section 33.20 which permits urban uses before
27

28
29 ²⁰⁹ *Advocates for Responsible Development and John Diehl v. Mason County*, WWGMHB Case No.6-2-0005
30 (Compliance Order on Plan and Development Regulations – Sewer in the Belfair UGA, November 14, 2007) at
31 15 and 16.

32 ²¹⁰ *Irondale Community Action Neighbors v. Jefferson County*, WWGMHB Case No. 03-2-0010c (Final
Decision and Order, August 22, 2003). Also see *Stephen Ludwig v. San Juan County*, WWGMHB Case No.
05-2-0019c (Final Decision and Order/Compliance Order – Lopez Island UGA (Final Decision and
Order/Compliance Order, April 20, 2006) and Final Decision and Order/Compliance Order – Eastsound UGA,
June 20, 2006).

1 the advent of sewers in the Carlsborg UGA, is non-compliant with RCW 36.70A.070(3),
2 36.70A.110(3), and substantially interferes with 36.70A.020(1), (2), and (12).

3 4 **2. Stormwater Facilities within the Capital Facilities Plan**

5 The County's CFP for Carlsborg, adopted in 2000, states that drainage facilities managed
6 by Clallam County are generally limited to drainage ditches and culverts that convey
7 stormwater runoff from public roadways. The CFP explains that other storm drainage
8 facilities are state or privately owned. At the time the CFP was adopted, the County had
9 received a grant for the development of a stormwater pollution prevention program. The
10 CFP says that new county-wide regulations will need to follow the Department of Ecology's
11 Stormwater Management Manual for Puget Sound Basin (DOE, 1992).²¹¹ That manual has
12 been updated recently.
13

14
15 The CFP states the level of service (LOS) for stormwater are the minimum standards of
16 road sections and utility road run-off and any pretreatment required under the County's
17 critical areas ordinance. The CFP projects that as Carlsborg develops, irrigation may have
18 to be converted to pipe facilities whenever there is road construction, improvements, or
19 repair. The CFP concludes that no special facility needs are necessary for Carlsborg, and
20 that no capital costs or financing are needed for these facilities.²¹²
21

22
23 **Conclusion:** While the CFP is eight years old and some of the information in it is out-of-
24 date, Futurewise does not provide any information about why the County's LOS standards,
25 future needs, and future financing for a UGA that is not rapidly growing are clearly
26 erroneous. Futurewise has not carried its burden of proof in regard to stormwater facilities.
27

28 **3. Parks Plan**

29 Futurewise states that the Parks Plan does not include the location of future parks and
30 funding for these facilities. The Parks Plan sets a LOS and identifies future deficiencies
31

32

²¹¹ Carlsborg Capital Facilities Plan at 5-1.

²¹² Carlsborg Capital Facilities Plan at 5-1 and 5-2.

1 based on this LOS. The Plan references the 1994 Clallam County CFP and says that it
2 includes a list of system deficiencies, project and improvement needs, and costs for the
3 entire County, where real and potential funding sources have been identified for Carlsborg
4 area. The Board concludes that the County can use both its county-wide CFP as well as the
5 Carlsborg CFP to fulfill the requirements of RCW 36.70A.070 (3).²¹³
6

7 **Conclusion:** While both the CFPs are dated, Futurewise has not shown how these two
8 CFPs fail to meet the requirements of RCW 36.70A.070(3). Futurewise has not carried its
9 burden of proof in regard to park facilities.
10

11 **4. Police Facilities**

12 Futurewise asserts that the County does not show how police services will be maintained
13 over the life of the CP. RCW 36.70A.030(20) includes “fire and police protection services”
14 in the definition of urban services. The Law Enforcement Chapter of the CP identifies 0.78
15 officers as the LOS standard for law enforcement services. The CP discloses that coverage
16 by police officers for east Clallam County is below LOS standards, and will be difficult to
17 maintain.²¹⁴
18

19
20 **Conclusion:** Futurewise has carried its burden of proof in showing that the County has not
21 demonstrated how it will maintain its LOS for Carlsborg over the CFP planning period. The
22 County has failed to show what police facilities and services are needed and how these
23 services will be funded to maintain the adopted LOS. Therefore, the Board finds that the
24 County’s CFP for police services does not comply with RCW 36.70A.070(3)(b)-(d).
25
26

27 **F. UGA Sizing**

28 **Legal Issue No. 14 (Futurewise Issue 7):** *Whether the County’s Urban Growth Areas are*
29 *too large given the population allocation chosen by the county from the most recent ten-year*
30 *population forecasts by the Office of Financial Management (OFM) in Section 20(A) and 21,*
31

32 ²¹³ See *Abenroth v. Skagit County*, WWGMHB Case No. 97-2-0060c (Compliance Order) and *Skagit County Growthwatch v. Skagit County*, WWGMHB Case No. 07-2-002 (Final Decision and Order)

²¹⁴ Carlsborg Capital Facilities Plan at 8-1.

1 and does this fail to comply with RCW 36.70A.020 (1-2, 9-10), 36.70A.070, 36.70A.110,
2 36.70A.115, and 36.70A.130?

3 Applicable Law - Supra

4
5 Positions of the parties

6 Futurewise argues that all six of the County's UGAs are oversized based upon the 20-year
7 growth projection selected by the County.²¹⁵ Futurewise states that the GMA requires the
8 size of UGAs to be based on population projections as well as employment, retail, and
9 public uses needed to accommodate that population with a "reasonable market factor"
10 permitted in order to account for fluctuations within the supply of land.²¹⁶ According to
11 Futurewise, the County has provided over 5,800 acres of residential land, which is
12 approximately 63 percent in excess of the needed 2,200 acres its own review shows as
13 being.²¹⁷ Futurewise goes on to point specifically to several UGAs to demonstrate this
14 fact.²¹⁸

15
16
17 In response, the County, on February 22, 2008, in conjunction with its Response Brief, filed
18 a Motion to Dismiss Futurewise Issue 7 (County Motion to Dismiss). The County contends
19 that this issue challenges the size (or boundaries) of the County's UGAs which were not
20 amended by the challenged action.²¹⁹ The County asserts that the boundaries of its UGAs
21 were established in 1995 and 2000 and Futurewise's claim is now time-barred due to the
22 GMA's 60-day appeal period.²²⁰ The County notes that the basis of Futurewise's claim is
23 RCW 36.70A.130, the GMA's update provisions, but this section of the GMA does not
24 authorize "a petitioner to challenge anew, a previously adopted and published UGA
25 boundary once its appeal period has passed."²²¹

26
27
28
29
30 ²¹⁵ Futurewise HOM Brief, at 33.

31 ²¹⁶ *Id.* at 33-34.

32 ²¹⁷ *Id.* at 34.

²¹⁸ *Id.* at 34-35.

²¹⁹ County Motion to Dismiss, at 1.

²²⁰ *Id.* (citing RCW 36.70A.290(2)).

²²¹ *Id.* at 2.

1 Within its Response Brief, the County reiterates the arguments sets forth in its Motion to
2 Dismiss that each of the UGAs was assessed during the County’s update and found to be
3 accomplishing the goals of the GMA.²²² The County points to development trends which
4 show a redirection of growth from the rural areas to the urban areas.²²³ The County further
5 notes that the GMA requires UGAs to be “adequately” sized to “accommodate” projected
6 urban growth and that the County’s UGAs satisfy these requirements.²²⁴ The County states
7 that it used OFM data, performed a land capacity analysis, and solicited public comment,
8 with the end result being that no cities in Clallam County desired a reduction in their UGA.²²⁵

10
11 The County goes on to note that Futurewise’s interpretation would interfere with functional
12 UGAs which have been in existence for many years.²²⁶ The County points to planning and
13 investment in urban facilities and services, population lifestyle choices, and economic
14 development to support maintaining the historic boundaries of the UGAs.²²⁷

15
16 In reply, Futurewise notes that the County appears to concede that its UGAs are oversized
17 but, rather than defending its actions, the County attempts “to make the same unsuccessful
18 procedural argument it made in its motion to dismiss.”²²⁸ Futurewise contends that the
19 County’s argument to support the sizing of its UGAs – economic growth and
20 environmentally-constrained parcels – and other conclusory policy arguments it used are
21 not supported by the GMA’s requirements pertaining to UGA sizing.²²⁹

22
23
24 At the HOM, Futurewise argued that UGAs changed over time, specifically the OFM
25 population projections that UGAs are based on, and the County needed to address whether
26 the existing UGAs were properly sized to meet projected population. The County conceded
27

28
29 _____
29 ²²² County Response, at 41-43.

30 ²²³ *Id.* at 43.

31 ²²⁴ *Id.* at 43-44.

32 ²²⁵ *Id.* at 44-45.

²²⁶ *Id.* at 45.

²²⁷ *Id.* at 45-51.

²²⁸ Futurewise Reply, at 20.

²²⁹ *Id.* at 21-22.

1 that UGAs change over time but that RCW 36.70A.110 and .130 are both based on an
2 underlying assumption that growth is occurring and UGAs must be able to accommodate
3 the growth.

4
5 Board Discussion

- 6
7 • *Motion to Dismiss*

8 RCW 36.70A.280(1) states (in pertinent part):

9 A growth management hearings board shall hear and determine only those
10 petitions alleging either: (a) That a state agency, county, or city planning
11 under this chapter is not in compliance with the requirements of this chapter,
12 chapter 90.58 RCW as it relates to the adoption of shoreline master programs
13 or amendments thereto, or chapter 43.21C RCW as it relates to plans,
14 development regulations, or amendments, adopted under RCW 36.70A.040 or
chapter 90.58 RCW.

15 The County notes that in the 2007 update it has not amended any UGA boundary.

16 Therefore, the County asserts the Board has no jurisdiction over the issue of UGA sizing
17 because the UGA boundaries were established in 1995 and 2000; the appeal period for
18 those actions has long since passed. The issue of whether the Board has jurisdiction when
19 a local jurisdiction has not taken an action with regard to the challenged matter is not simply
20 based on the filing of timely appeal. It also goes to the scope of the Board's jurisdiction
21 during an update under RCW 36.70A.130.
22

23
24 Clallam County Resolution No. 77, 2007 recites at section 2 that:

25 The GMA requires counties to review their designated urban growth areas
26 at least every ten years. RCW 36.70A.130(3).

27
28 Further, at section 15, the County recited, in part:

29 In connection with this update, Clallam County has performed a 10 year
30 review of its six Urban Growth Areas (UGA) and has updated its UGA capacity
31 analysis to include the most recent (2002) OFM County population projections
32 for growth management and in consideration of its updated linear projections;

1 Thus the question is: *May the Board review the County's UGAs, reviewed pursuant to RCW*
2 *36.70A.130(3), even though the County determined not to amend those UGAs?*

3
4 In this Board's January 10, 2008 Order on Motion to Dismiss Issue 2, the Board held:

5 An update pursuant to RCW 36.70A.130(1) and (4) requires review and
6 revision, if necessary, on all non-compliant provisions of a county
7 comprehensive plan and development regulations. A petitioner that has raised
8 an issue of non-compliance in the proceedings to adopt an update may bring
9 that issue to the Board in a petition for review alleging failure to review and
revise the issue raised below.²³⁰

10 While one of the two current members of this Board dissented from this Order, the basis for
11 the dissent was that the amendments to the County's ADU provisions did not fall within the
12 scope of RCW 36.70A.130(1)(a) which provides, in pertinent part:

13
14 Each comprehensive land use plan and development regulations shall be
15 subject to continuing review and evaluation by the county or city that adopted
16 them. A county or city shall take legislative action to review and, if needed,
17 revise its comprehensive land use plan and development regulations to ensure
18 the plan and regulations comply with the requirements of this chapter
according to the time periods specified in subsection (4) of this section.

19 The GMA provisions regarding updates to UGA boundaries however, are a different matter.
20 Under RCW 36.70A.130(3), counties have a duty under the GMA to review their designated
21 UGAs and the densities permitted within both the incorporated and unincorporated portions
22 of each UGA. RCW 36.70A.130 (3)(b) mandates that the UGA "shall be revised to
23 accommodate the urban growth projected to occur in the county for the succeeding twenty-
24 year period." In light of this affirmative duty, the Board finds that the County's UGAs are
25 subject to appeal during an RCW 36.70A.130(3) update. Were it otherwise, there would be
26 no recourse for petitioners in instances where a county conducted its RCW 36.70A.130(3) in
27 a manner contrary to the GMA. Accordingly, **the Motion to Dismiss Issue 7 is denied.**
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²³⁰ Dry Creek et al. v. Futurewise, WWGMHB No. 07-2-0018c, Order on Motion to Dismiss Issue 2, at 8.
(January 10, 2008).

1 Although the Board concludes that it has jurisdiction to hear this issue, the two Board
2 members could not reach agreement on the appropriate disposition of this issue.

3
4 **Conclusion:** The Board could not reach agreement on a decision on the issue of whether
5 the County's Urban Growth Areas are too *large* given the population allocation chosen by
6 the county from the most recent ten-year population forecasts by the Office of Financial
7 Management (OFM).
8

9 **Legal Issue No. 15 (Futurewise Issue 8):** *Whether the County's failure to review and*
10 *revise comprehensive plan provision 31.02.275, Commercial and industrial land uses;*
11 *Sequim-Dungeness Regional Plan 31.03.270, Rural land – Policies; and Sequim-*
12 *Dungeness Regional Plan 31.03.290, Urban growth policies and implementing zoning*
13 *regulations, allowing urban growth outside urban growth areas violates RCW 36.70A.020(1-*
14 *2, 9-10), RCW 36.70A.070, RCW 36.70A.110, and RCW 36.70A.130?*

15 Applicable Law - Supra

16 Positions of the parties

17 Futurewise contends that the County has not confined urban growth to its UGAs as required
18 by RCW 36.70A.110 and Goals 1 and 2.²³¹ With the Sequim-Dungeness Regional Plan,
19 Futurewise asserts that the County allows urban-type development within the rural areas,
20 including Major Industrial Developments that is not limited by the special circumstances set
21 forth in RCW 36.70A.367, and the Rural Suburban Community (RSC) and Rural Center
22 (RC) designation.²³² In addition, Futurewise argues that the County allows uses which are
23 objectionable due to nuisance characteristics, size, or potential for danger without
24 containing protections in regard to rural character and compatibility.²³³ Furthermore, the
25 cited regional plan permits high-intensity commercial, industrial, and urban residential land
26 uses which is not supported by the GMA and amounts to the type of sprawl-inducing lack of
27 regulation over rural land uses that the GMA was enacted to prevent.²³⁴
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29
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32 ²³¹ Futurewise Prehearing Brief, at 35-36.

²³² *Id.* at 38-39.

²³³ *Id.* at 39.

²³⁴ *Id.* at 39-40.

1 In response, the County argues that Futurewise is attempting to challenge a CP policy
2 regarding Major Industrial Developments, a challenge Futurewise did not raise in its PFR.²³⁵
3 The County asserts that permitted uses and densities within the Sequim-Dungeness
4 Planning Region reflect pre-GMA densities or is limited to a single LAMIRD, which by
5 definition is not urban growth.²³⁶ As for the uses and densities within the RC designation,
6 according to the County, this also has limited application to Blyn since the other areas have
7 since either been designated as a UGA or a LAMIRD.²³⁷ The County points out that the
8 Blyn area has unique circumstances due to a significant amount of the area being owned by
9 the Jamestown S’Klallam tribe which holds the land in a mix of reservation, trust, and fee
10 status with future plans for a Master Planned Resort.²³⁸
11
12

13 In reply, Futurewise notes that it appears Clallam County concedes it fails to limit industrial
14 development to urban areas but then argues Futurewise lacks standing in regards to this
15 issue.²³⁹ Futurewise asserts it is not objecting to Major Industrial Developments as the
16 County contends, rather it is arguing that the County’s Regional Plan permits urban growth,
17 including industrial development, outside of UGAs when such development does not satisfy
18 the exceptions provide for in 36.70A.367.²⁴⁰ Futurewise additionally argues that its
19 comments were “reasonably” related to the “matter” challenged and, therefore pursuant to
20 *Wells v. WWGMHB*, 100 Wn. App. 657 (2000), it has participation standing.²⁴¹
21
22

23 Futurewise contends that the mere fact the Jameston S’Klallam Tribe is seeking certain
24 types of development does not eliminate the County’s duty under the GMA in regards to
25 limiting urban growth.²⁴²
26
27

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29 ²³⁵ County Response, at 38.

30 ²³⁶ *Id.* at 38-39.

31 ²³⁷ *Id.* at 39.

32 ²³⁸ *Id.*

²³⁹ Futurewise Reply, at 22-23.

²⁴⁰ *Id.* at 23.

²⁴¹ *Id.* 23-24.

²⁴² *Id.* at 24

1 Board Discussion

2 Futurewise based its challenge to CCC 31.02.275 on an alleged violation of RCW
3 36.70A.020(1-2, 9-10), RCW 36.70A.070, RCW 36.70A.110, and RCW 36.70A.130. In its
4 Prehearing Brief, Futurewise instead challenges this section based on non-compliance with
5 RCW 36.70A.367. WAC 242-02-210 (2)(c) provides that the PFR shall contain “A detailed
6 statement of the issues presented for resolution by the board that specifies the provision of
7 the act or other statute allegedly being violated and, if applicable, the provision of the
8 document that is being appealed”. (emphasis added) This section would serve no purpose
9 if petitioners were free to cite specific provisions alleged to have been violated in the PFR,
10 and yet argue that the legislative action under appeal violated some other section. In this
11 case in particular, the Presiding Officer gave the Petitioners additional time to revise their
12 issue statements, allowing them to be clear and specific. This is not a matter of participation
13 standing,²⁴³ but compliance with the Boards’ Rules of Practice. Futurewise’s response that
14 this was an example of how the County violates GMA’s prohibition against urban growth in
15 the rural area is unpersuasive. Futurewise’s argument was clearly focused on asserting that
16 CCC 31.02.275 failed to meet the standards of RCW 36.70A.367.
17
18

19
20 With regard to Sequim Regional Plan 31.03.270, Rural Land – Policies, Futurewise
21 challenges the provisions regarding the RC zone. In its reply brief, Futurewise abandoned
22 its arguments regarding the RSC zone.²⁴⁴ The County notes that Futurewise’s cites
23 language only in regard to these zones and, to the extent that Futurewise contests other
24 zoning designations, it has failed to identify these zones or meet its burden of proof.²⁴⁵
25 Futurewise has not responded to this point in its reply, therefore the Board’s holding
26 regarding CCC 31.03.270 is limited to those zones.
27
28

29 With regard to the RC zone, this designation applies to the Carlsborg, Diamond Point-
30 Sunshine Acres, and Blyn areas. Carlsborg has been designated a UGA and Diamond
31

32 ²⁴³ See, Futurewise Reply Brief, at 21-22.

²⁴⁴ Futurewise Reply Brief at 24, fn. 110.

²⁴⁵ Clallam County’s Corrected Response Brief at 38, fn. 197.

1 Point-Sunshine Acres has been designated as a LAMIRD, while the Blyn area has not been
2 designated at all. Futurewise’s objection to Carlsborg and Diamond Point-Sunshine Acres
3 appears based on the fact that, while the County acknowledges these areas as a UGA and
4 a LAMIRD, respectively, “the County points to no section of its code requiring that this
5 designation be so applied in the future.”²⁴⁶ The Board does not find that this is persuasive
6 evidence of non-compliance.
7

8 The application of the RC designation is made via the comprehensive plan. Currently, the
9 comprehensive plan specifies the only areas where that designation is applied. Unless the
10 County has applied that designation in error, and that has not been demonstrated in this
11 case, the County is not out of compliance.
12

13 As applied to Blyn, however, the Board does not find the RC designation compliant. Blyn is
14 neither a UGA nor a LAMIRD, yet the RC designation allows “Mixed high intensity
15 commercial, industrial and urban residential land uses . . .”²⁴⁷ The County justifies this
16 designation based on Blyn’s “unique local circumstances” such as the fact that “about half of
17 Blyn is now owned by the Jamestown S’Klallam’ Tribe in a mix of reservation, trust and fee
18 status” and “in the future all of this property will likely be in reservation/trust status.”²⁴⁸ As
19 Futurewise correctly notes, “as long as the Tribe owns the land in fee and does not put it
20 into trust status, it is part of the Clallam County and must comply with the County’s codes.
21 The County must in turn comply with the GMA.”²⁴⁹ The County offers no justification other
22 than that just recited; therefore, for allowing the RC designation to be applied to Blyn, the
23 Board finds that application to be clearly erroneous.
24
25
26

27 Futurewise neither cites to nor provides argument as to why Sequim-Dungeness Regional
28 Plan 31.03.290 is non-compliant with the GMA. The Board finds that this claim has been
29 abandoned.
30

31 ²⁴⁶ Futurewise Reply Brief at 24

32 ²⁴⁷ CCC 31.03.270(1).

²⁴⁸ Clallam County’s Corrected Response Brief at 39.

²⁴⁹ Futurewise Reply Brief at 24.

1 **Conclusion:** Futurewise’s challenge to CCC 31.02.275 fails due to its reliance on argument
2 that this section is in violation of RCW 36.70A.367, an allegation made for the first time in
3 the Prehearing Briefing with no reference within the PFR. Except as applied to Blyn, the
4 provisions of CCC 31.03.270 regarding the Rural Center zone comply with the GMA. As to
5 Blyn, it has not been designated as a UGA or a LAMIRD and therefore the allowance of
6 urban uses or more intense rural uses violates RCW 36.70A.070 (5)(d), RCW 36.70A.110
7 and RCW 36.70A.020 (1) and (2) in this area is clearly erroneous. The Board also finds that
8 Futurewise has abandoned its claim with regard to CCC 31.03.290.
9

10
11 **G. INVALIDITY**

12 Dry Creek set forth Legal Issue 7, asserting that the County’s actions should be held invalid
13 under RCW 36.70A.302 for substantial interference with the fulfillment of Goals 1, 2, and/or
14 10 of the GMA. Futurewise did not set forth a specific legal issue pertaining to invalidity, but
15 did raise the remedy in its HOM Brief.²⁵⁰
16

17 Applicable Law

18 RCW 36.70A.302
19

20 Positions of the parties

21 Dry Creek contends it has detailed how the LAMIRD provisions contained in the County’s
22 Comprehensive Plan and Development Regulations substantially interfere with the
23 fulfillment of Goals 1, 2, and 10.²⁵¹ In addition, Dry Creek argues that if development was
24 permitted to occur, the rural character of the County, in and around the LAMIRDs, would be
25 adversely impacted.
26

27
28 Futurewise urges invalidity to protect against vested development.²⁵² Futurewise
29 contends, with the exception of Legal Issue 12 (Futurewise Issue 5), that the continued
30

31
32 ²⁵⁰ Futurewise HOM Brief, at 40.

²⁵¹ Dry Creek HOM Brief, at 16.

²⁵² Futurewise HOM Brief, at 40.

1 validity of the County's Comprehensive Plan, Development Regulations, and map
2 designations will substantially interfere with the fulfillment of the goals of the GMA,
3 specifically Goals 1, 2, 6, 8, 9, and 10.²⁵³

4
5 The County argues that invalidity is not warranted in this situation, not only because the
6 Petitioners have failed to demonstrate that the County's actions were clearly erroneous but
7 because the "County's land use plans do not substantially interfere with GMA Goals."²⁵⁴

8 The County asserts that the Petitioners are relying on generic standards and speculation,
9 both of which are insufficient to establish invalidity.²⁵⁵

11 Board Discussion

12 This Board has held that invalidity should be imposed if continued validity of the non-
13 compliant CP provisions or development regulations would substantially interfere with the
14 local jurisdiction's ability to engage in GMA-compliant planning.²⁵⁶ Under this analysis, a
15 finding of invalidity has been imposed where there is a serious risk of significant inconsistent
16 development vesting before the date on which the local jurisdiction is expected to achieve
17 compliance.

- 20 • *Rural Densities*

21 The extent of the risk is dependent upon the facts of each case. As the Board noted above,
22 in the discussion of rural densities, the importance of rural lands and their character is
23 specific, looking to land use patterns for establishing rural character and seeking to foster
24 traditional rural lifestyles and economies that a County has historically provided. By
25 authorizing densities that do not reflect the existing landscape or economy of the area, the
26 County has failed to maintain the traditional rural lifestyles of the residents of Clallam
27 County as required by the GMA. The allowed rural densities will encourage urban growth in
28
29

31 ²⁵³ *Id.* at 41-42.

32 ²⁵⁴ County Response, at 59-60.

²⁵⁵ *Id.* at 60.

²⁵⁶ See *Butler v. Lewis County*, WWGMHB Case No. 99-2-0027c (Order Finding Noncompliance and Imposing
Invalidity, February 13, 2004).

1 rural areas, interfering with RCW 36.70A.020(1), the GMA's urban growth goal, and will
2 allow the conversion of undeveloped land into sprawling, low density development,
3 interfering with RCW 36.70A.020(2), the GMA's sprawl reduction goal.

4
5 • *Carlsborg UGA*

6 The Board noted above that the County allows for development in the Carlsborg only on
7 septic tanks. Allowing septic reliant development to vest during remand would substantially
8 interfere with the urban growth goal of the GMA, RCW 36.70A.020(1), which seeks to
9 encourage development in urban areas where adequate public facilities exist or can be
10 provided in an efficient manner. Septic tanks are not an urban level of service and, the
11 County cannot provide sewer service to enable urban development at the time of
12 development. Allowing the vesting of such development would also substantially interfere
13 with the GMA goal of reducing sprawl, RCW 36.70A.020(2), and the public facilities and
14 services goal, RCW 36.70A.020(12), which seeks to ensure that those public facilities and
15 services necessary to support development shall be adequate to serve the development at
16 the time the development is available for occupancy. Allowing development to continue to
17 vest at densities of 2 du/acre before sewer service is available will preclude development at
18 appropriate urban densities.

19
20
21
22 • *Urban Densities*

23 The Board found elsewhere in this Order that the County's zoning districts within the
24 Sequim and Port Angeles UGAs which provide for a maximum residential density of 2
25 du/acre violates the RCW 36.70A.110(3), RCW 36.70A.020(1), (2), and (12). These zoning
26 districts are the CCC 33.13.010 URH; CCC 33.13.020 URL; and CCC 33.19.030(1) S(R-1)
27 zones. The Board also found that the presence of essential public facilities and the
28 existence of sprawling, low-density development are not sufficient justification for such a
29 non-urban density. The Board finds that allowing non-urban levels of development to vest
30 or develop in these areas during the remand would substantially interfere with RCW
31 36.70A.020 (1), (2), and (12).
32

- 1 • Blyn

2 As noted above, Blyn has not been designated as a UGA or a LAMIRD and therefore the
3 allowance of urban uses or more intense rural uses violates RCW 36.70A.070(5)(d) and
4 36.70A.110. The risk of urban levels of development vesting in this area during remand is
5 genuine and would substantially interfere with RCW 36.70A.020(1) .
6

7 **Conclusion:** The Board finds that the County’s failure to require appropriate rural densities
8 and to have in place an adequate capital facilities plan for the Carlsborg UGA warrants a
9 determination of the imposition of invalidity. In addition, the risk of urban levels of
10 development vesting in Blyn during remand would substantially interfere with RCW
11 36.70A.020(1) and also warrants a determination of invalidity..
12

13
14 **VII. FINDINGS OF FACT**

- 15 1. Clallam County is a county located west of the crest of the Cascade Mountains that is
16 required to plan pursuant to RCW 36.76A.040.
17 2. On August 28, 2007 Clallam County adopted Ordinance 827, amending Clallam
18 County Code, Chapter 31.02 to add a new section to formally identify certain local
19 land areas as limited areas of more intensive rural development (LAMIRDs).
20 3. On August 28, 2007 Clallam County also adopted Resolution No. 77, 2007 affirming
21 that the County had reviewed and updated its countywide comprehensive plan,
22 regional plans, and development regulations to ensure continued compliance with the
23 Growth Management Act.
24 4. On October 26, 2007 Petitioner Dry Creek Coalition filed a timely appeal.
25 5. On October 3, 2007 Petitioner Futurewise filed a timely appeal.
26 6. The County’s limitation on conditional uses is not highly specific. In both the RNC and
27 RLC zones, the County permits a number of uses “consistent with applicable land use
28 regulations and the character of the neighborhood”.
29 7. The County’s own aerial photograph of 1990 for the SW Carlsborg area clearly shows
30 the lack of a built environment, with only a handful of buildings shown within the
31 northern portion of the LAMIRD. Although the 2005 aerial photograph shows an
32

1 increase in development, it is not at more than a rural level of intensity, nor was it in
2 existence in 1990 as required by the GMA for LAMIRD designation.

- 3 8. As with the SW Carlsborg LAMIRD, the County states that platted but undeveloped
4 land was considered as part of the existing, built environment and utilized when
5 establishing the LOB of the Dungeness Village LAMRID. Aerial photographs within the
6 *LAMIRD Report*, demonstrate that the core area of the LAMIRD was developed in
7 1990, however, parcels in the north/north east section as well as the southern portion
8 were either not developed or development at a non-intensive level. In addition, the
9 Board further notes that the LOB for this LAMIRD is irregular in that the County
10 extended the LAMIRD southward, across a waterway that appears to define the 1990
11 boundary.
- 12 9. The County included subdivided/platted but undeveloped parcels when considering
13 the existing, built environment that needed to be contained within the East Anderson
14 LAMIRD. Large parcels of land located north of East Anderson Road as these
15 parcels were not only undeveloped in 1990, but remain so today. Inclusion of these
16 parcels also creates an irregular boundary as it does not follow the physical boundary
17 established by East Anderson Road.
- 18 10. The County continues its erroneous definition of existing, built environment and, in
19 doing so, has created an expansive 1,750 acre LAMIRD with parcels of 5 acres of
20 more located both north and south of Lotzgesell Road which remains undeveloped
21 today.
- 22 11. Dryke West – is an 8.77 acre site with the portion west of McDonnell Creek Road
23 currently developed with a mini-storage facility which had already started to be
24 developed in 1990. However, east of McDonnell Creek Road is parcel of land that in
25 both 1990 and 2005 remains undeveloped. Dryke East – is a 49.23 acre site that is
26 bisected by Highway 101. The 1990 aerial photograph shows development north of
27 the highway but not west of Pierson Road on the southern side of the highway, which
28 remains undeveloped in 2005. Land which was undeveloped in 1990 and remains
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1 undeveloped today currently is included within both the Dryke West and the Dryke
2 East areas with no basis for inclusion.

3 12. Based on the 1990 aerial photograph, lands west of Highway 112 which bisects this
4 section of the Laird's Corner West LAMIRD were forested in 1990 and areas north of
5 Granite Road appear to have both forest and grasslands.

6 13. The 1990 aerial photographs that parcels east of Dry Creek Road had no
7 development as of 1990 with development only existing on the central portion of the
8 area west of Dry Creek Road.

9 14. The Deer Park LAMIRD includes a gravel pit within its northern most area and while
10 intensive in nature, does not require inclusion within a LAMIRD. The 1990 aerial
11 photograph denotes development within the area of the gravel pit and along Highway
12 101, which bisects the LAMIRD. All other areas were not developed but appear to
13 have been included within the area because these areas had been zoned
14 Commercial.

15 15. The Lake Farm LAMRID consists of 164 acres. The County determined the existing
16 area based on a definition that included platted/subdivision parcels that were
17 undeveloped in 1990.

18 16. While the County LAMIRD report declares that the LOB of the Bear Creek identifies a
19 cohesive and established neighborhood that existed in 1990, the 1990 aerial
20 photograph reveals little evidence of development at the western end (now identified
21 as the Bear Creek Recreation Area).

22 17. While the County LAMIRD report notes that most of the lots that make up Whitcomb
23 Dimmel east were established prior to July of 1978 and consists of fishing cabins and
24 mobile homes that date back to the 1960's and 1970's, there is no similar justification
25 provided for the LOB of WD-west. A review of the 1990 aerial photograph west of
26 Highway 101 reveals no evidence of the built environment, and no such evidence has
27 been brought to the Board's attention.

28 18. Most of the land in the Bogachiel Bridge LAMIRD is vacant or occupied by single-
29 family homes and outbuildings on larger lots which are well outside the smaller,
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1 developed lots that qualify as a LAMIRD immediately west of Highway 101 and east of
2 Highway 101 along the Bogachiel River.

3 19. Lands to the far west and in the southeast corner of this LAMIRD show no evidence of
4 a built environment existing in 1990.

5 20. The County has included large lots of land in the Three Rivers LAMIRD that show no
6 sign of development in the 1990 aerial photograph. It is not apparent the
7 “neighborhood character” the LOB is intended to maintain on large undeveloped
8 parcels of land.

9 21. The County bases its justification for the LOB in the Quillayute LAMIRD on the
10 existence of “a cohesive and established neighborhood that existed as of 1990.” This
11 neighborhood is not evident in the 1990 aerial photograph.

12 22. The 1990 aerial photograph does not support that Quillayute Prairie area is an area
13 delineated predominately by the built environment.

14 23. For the Little Quillayute Prairie LAMIRD, just as with the Quillayute Prairie LAMIRD,
15 the County noted that, in reference to the Quillayute Residential zoning, “By 1990 this
16 desired residential expansion had not yet occurred. While lack of pre-existing
17 development resulted in the downsizing of several thousand acres throughout the
18 WPR, retaining certain areas within logical outer boundaries for desired infill is also
19 appropriate.” The 1990 aerial photograph reveals little development.

20 24. The logical outer boundary of the O’Brien LAMIRD creates large areas of “outfill”, and
21 the built environment does not predominate.

22 25. While the County’s LAMIRD for the Crescent Beach LAMIRD report says that the
23 uses in the LAMIRD are limited to tourist uses, the LAMIRD’s RNC designation
24 allows a wide variety of uses, including residential uses, which RCW 36.70A.070
25 (5)(d)(ii) prohibits. It appears that that the Clallam County zoning code does not have
26 a zoning designation that appropriately limits the designation of Type 2 LAMIRDs.

27 26. The 1990 and the 2005 aerial photos of the Lyre River LAMIRD show large areas of
28 vacant land between the two developed small scale tourist commercial areas at the
29 ends of the LAMIRD and large undeveloped forested area at the edge of the LAMIRD.
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1 The area is zoned RNC which allows for a wide variety of commercial uses as well as
2 single-family dwelling units has potential to change the character of this LAMIRD
3 characterized by rural commercial tourist uses.

4 27. The County's LAMIRD report states that the Bullman LAMIRD consists of an old
5 subdivision dating back to the 1930s, a small hotel, and several large vacant parcels.
6 The County's explanation for including the large, vacant parcels are that local
7 circumstances make it necessary to provide for residential development for areas
8 experiencing minimal growth.
9

10 28. The 1990 and 2005 aerial photographs and MapWPLAMIRD1-b depicting parcel size
11 and build-out show a very limited area of development both in 1990 and in 2005. The
12 Snider LAMIRD include large areas of undeveloped land on the edges of the LAMIRD.
13

14 29. Futurewise has adequately demonstrated that the rural character of Clallam County,
15 specifically its visual landscape and farm-based economy, is dominated by lots of
16 greater than five acres in size.

17 30. With such a large percentage of the County's existing land use pattern at a parcel size
18 of 4.81 acres and farms within the County averaging 25 acres, the existing rural
19 landscape supports a finding that the rural character of Clallam County is a rural
20 density of 1 du/5 acre.
21

22 31. CCC 31.02.285 (4)(b) (Policy 7) prohibits the extension of sanitary sewer lines except
23 when on-site disposal systems provide a threat or risk to public health.

24 32. CCC 31.02.285 (4)(b) (Policy 7) needs to be read with CCC 31.02.285 (4)(d) (Policy
25 9) which says that if sanitary sewer systems extend into rural or resource lands or an
26 area of failing systems, the sewage lines extending from urban should be for
27 transmission only (tight-lines) and sized only to serve the area declared necessary.

28 33. The CFP states the level of service (LOS) standards for stormwater are the minimum
29 standards of road sections and utility road run-off and any pretreatment required
30 under the County's critical areas ordinance.
31

32 34. The CFP concludes that no special facility needs are necessary for Carlsborg, and
that no capital costs or financing are needed for these facilities.

- 1 35. The Parks Plan in the CFP for the Carlsborg UGA sets a level of service (LOS)
2 standard for parks and identifies future deficiencies based on this LOS.
- 3 36. The Parks Plan in the CFP for Carlsborg references the 1994 Clallam County Capital
4 Facilities Plan and says that it includes a list of system deficiencies, project and
5 improvement needs, and costs for the entire County, where real and potential funding
6 sources have been identified for Carlsborg area.
- 7
8 37. The Plan for the Carlsborg UGA discloses that coverage by police officers for east
9 Clallam County is below LOS standards, and will be difficult to maintain.
- 10 38. The County has failed to show what police facilities and services are needed and how
11 these services will be funded to maintain the adopted LOS.
- 12 39. The Rural Center zone designation applies to the Carlsborg, Diamond Point-Sunshine
13 Acres, and Blyn areas.
- 14 40. Carlsborg has been designated a UGA and Diamond Point-Sunshine Acres has been
15 designated as a LAMIRD, while the Blyn area has not been designated at all.
- 16 41. The application of the Rural Center designation is made via the comprehensive plan.
17 Currently, the comprehensive plan specifies the only areas where that designation is
18 applied.

19
20 **Findings Related To Invalidity:**

- 21 42. Data contained within their Rural Lands Report (SPDR-4, PAPER-4, SPR-4, and WPR-
22 4) generally demonstrate that with very few exceptions, the typical Clallam County
23 farm is greater than five acres. Given the County's reliance on farming to sustain
24 traditional rural lifestyles and rural-based economies within the *Rural Lands Report*,
25 the size of existing, operating farms is persuasive when determining what the
26 character of the County's rural areas is. Based on statistics provided by Futurewise and
27 the County itself, farms within Clallam County average 25 acres, with farms generally
28 being five acres or greater.
- 29
30 43. The County has eight rural zoning districts outside of LAMIRDs, with approximately 52
31 percent of all parcels within these zones being greater than 4.81 acres. The Board
32 further notes that 16 percent of all rural parcels range between 1 and 2.4 acres and 10

1 percent of all parcels being greater than 20 acres. Therefore, in regard to the land
2 use pattern of Clallam County's existing rural area, more than half of the County's
3 rural land is comprised of parcels greater than 4.81 acres each.

4 44. The County generally provides for seven urban zones (Chapter 33.13 Urban Zones)
5 with additional zoning designations provided for the Sequim UGA (Chapter 33.19) and
6 the Carlsborg UGA (Chapter 33.20). Only three of the County's urban zoning districts
7 are currently before the Board – Urban Residential High Density (URH) CCC
8 33.13.010, Urban Residential Low Density (URL) CCC 33.13.020, and Sequim Urban
9 Residential -1 (S(R-1)) CCC 33.19.030.
10

11 45. The County code provides for a maximum residential density as opposed to a
12 minimum. Therefore, even though a zoning district sets density at 9 du/acre,
13 development could potentially occur at less than what has historically been deemed
14 by the Hearings Boards, and adopted by many jurisdictions, as an urban level of
15 development.
16

17 46. Although reduced densities adjacent to certain types of essential public facilities,
18 such as airports, may be warranted for safety reasons, reduced densities based on a
19 potential for future nuisance claims does not provide the same type of support.
20

21 47. The Sewer Feasibility Study for the Carlsborg UGA concedes that public sewer is a
22 necessary service for a UGA.

23 48. Under the GMA, septic systems, whether individual or community, are not considered
24 "urban services".

25 49. Clallam County is at the beginning stages of planning for a Carlsborg UGA sewer
26 system and still has no sewer capital facilities plan that meets the requirements of
27 RCW 36.70A.070 (3).

28 50. Because the Clallam County cannot provide sewer service in the Carlsborg UGA, it
29 also cannot provide for urban densities in the UGA.
30

31 51. Allowing development to continue at two units per acre before sewer service is
32 available will most likely preclude development of urban densities.

1 52. Blyn has not been designated as a UGA or a LAMIRD and therefore the allowance of
2 urban uses or more intense rural uses violates RCW 36.70A.070 (5)(d), RCW
3 36.70A.110 and would substantially interfere with the fulfillment of the goal of RCW
4 36.70A.020 (1). The risk of urban levels of development vesting in this area during
5 remand is real and would substantially interfere with RCW 36.70A.020(1).
6
7 53. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.

8 **VIII. CONCLUSIONS OF LAW**

- 9 A. The Board has jurisdiction over the parties to this action.
10 B. The Board has jurisdiction over the subject matter of this action.
11 C. Petitioner Dry Creek Coalition has standing to raise the issues in this case.
12 D. Petitioner Futurewise has standing to raise the issues in this case.
13 E. LAMIRDs are not a mandatory designation under the GMA pursuant to RCW 36.70A.
14 070 (5)(d)
15 F. Dry Creek has not demonstrated that the continued existence of rural centers in the
16 County is a violation of the GMA.
17 G. Changes in use in a LAMIRD are allowed so long as the uses remain consistent with
18 the character of the existing area pursuant to RCW 36.70A.070 (5)(d)(i)(C)
19 H. While the County is entitled to allow uses consistent with the existing areas, they
20 must be consistent with the areas and uses that existed as of July 1, 1990. Because
21 the County's conditional use provisions allow a potentially broader range of uses,
22 they are non-compliant with RCW 36.70A.070(5)(d)(i)(C).
23 I. The County may not rely on RCW 36.70A.070(5)(a) as an independent legal basis for
24 LAMIRDs that contravene established GMA criteria. However, even where a basis for
25 establishing the LOB was pre-existing zoning boundaries, LAMIRDs that also meet
26 the criteria of RCW 36.70A.070(5)(d) will be found compliant .
27
28 J. Nothing in the GMA expressly prohibits a county from reconsidering the boundaries
29 of a LAMIRD or establishing a LAMIRD at a later date. The only condition the
30
31
32

1 Legislature chose to impose is that the boundaries of a LAMIRD meet the applicable
2 requirements.

3 K. If a county can show its work, and the change remains consistent with the GMA, it
4 may revise the LOB of a LAMIRD.

5 L. Petitioner Dry Creek has not demonstrated that County failed to comply with the
6 GMA because it does not prohibit new or expanded LAMIRDs. Such a prohibition is
7 not present in RCW 36.70A.070 (5)(d).
8

9 M. The following LAMIRDs fail, in whole or in part to comply with the requirements of
10 RCW 36.70A.070(5)(d)(iv) and (iv):

- 11 SPRD LAMIRD 5 – SW Carlsborg
- 12 SPDR LAMIRD 6 – Dungeness Village
- 13 SPRD LAMIRD 7 – East Anderson
- 14 SPRD LAMIRD 8 – Lotzgesell
- 15 SDPR LAMIRD 9 – Dryke/Sherbourne Road
- 16 PAPER LAMIRD 4 – Laird’s Corner
- 17 PAPER LAMIRD 6 – Deer Park
- 18 PAPER LAMIRD 7 – Lake Farm
- 19 WPR LAMIRD 2 - Bear Creek
- 20 WPR LAMIRD 8 – Whitcomb/Dimmel
- 21 WPR LAMIRD 9 - Bogachiel Bridge
- 22 WPR LAMIRD 10 – Three Rivers
- 23 WPR LAMIRD 11 - Quillayute River
- 24 WPR LAMIRD 13 - Quillayute Prairie
- 25 WPR LAMIRD 14 - Little Quillayute Prairie
- 26 PAPER LAMIRD 9 – O’Brien
- 27 SPR LAMIRD 1 -Crescent Beach
- 28 SPR LAMIRD 3 - Lyre River
- 29 SPR LAMIRD 8 – Bullman
- 30 WPR LAMIRD 1 – Snider

31 N. The following LAMIRDs comply with the requirements of RCW 36.70A.070(5)

- 32 SPDR LAMIRD 1 – Diamond Point
- WPR LAMIRD 3 – Sappho
- WPR LAMIRD 4 - Old Beaver
- WPR LAMIRD 7 – Maxfield
- WPR LAMIRD 12 - Quillayute Airport
- PAPER LAMIRD 10 - The Bluffs
- SPR LAMIRD 6 - Hoko River West
- SPR LAMIRD 7 – Straits

1 SPR LAMIRD 9 - Camp Hayden

2 O. By authorizing densities that do not reflect the existing landscape or economy of the
3 area, the County has failed to maintain the traditional rural lifestyles of the residents
4 of Clallam County as required by RCW 36.70A.070(5) and RCW 36.70A.011.

5
6 P. The following rural zoning district within Clallam County violates RCW 36.70A.110
7 and substantially interferes with RCW 36.70A.020(1) and, 36.70A.020(2) because
8 these zoning districts permit urban, not rural, densities outside of an urban growth
9 area:

10

11 CCC 33.10.030 R2 zone:	Permits 1 du/2.4 acres
12 CCC 33.10.035 RW2 zone:	Permits 1 du/2.4 acres
13 CCC 33.10.040 R1 zone:	Permits 1 du/acre
14 CCC 33.10.045 RW1 zone:	Permits 1 du/acre

15 All comprehensive plan policies and map designations that relate to this zoning
16 districts are themselves non-compliant, pursuant to RCW 36.70A.070, which requires
17 the plan, including the future land use map, to be an internally consistent document.
18 Additionally, these comprehensive plan policies and regulations substantially interfere
19 with RCW 36.70A.020(1) and (2) and are invalid pursuant to RCW 36.70A.302.

20 Q. The following urban zoning districts within the Sequim and Port Angeles UGAs which
21 provide for a maximum residential density of 2 du/acre violates RCW 36.70A. 110(3)
22 and substantially interfere with RCW 36.70A. 020(1), (2). These zoning districts are
23 as follows:

24

25 CCC 33.13.010 URH	1 du/12,500 sq feet
26 CCC 33.13.020 URL	1 du/21,500 sq feet
27 CCC 33.19.030(1) S(R-1)	1 du/one-half acre

28 All comprehensive plan policies and map designations that relate to this zoning
29 districts are themselves non-compliant, pursuant to RCW 36.70A.070 and
30 substantially interfere with RCW 36.70A.020(1) and (2).

31 R. CCC 31.02.285 (4)(b)(Policy 7) complies with the RCW 36.70A.110(4).

32 S. Futurewise has not carried its burden of proof in regard to stormwater facilities in the
Carlsborg UGA.

- 1 T. Futurewise has not carried its burden of proof that Policy CCC31.02.285(4)(d) and
- 2 Section D fail to comply with RCW 36.70A.020(1-2, 9-10), RCW 36.70A.070, RCW
- 3 36.70A.110, and RCW 36.70A.130.
- 4 U. CCC Section 33.20 which permits urban uses before the advent of sewers in the
- 5 Carlsborg UGA is non-compliant with RCW 36.70A.070(3), 36.70A.110(3), and
- 6 substantially interferes with RCW 36.70A.020(1), (2), and (12).
- 7
- 8 V. The lack of an adopted sewer plan causes the Carlsborg UGA to substantially
- 9 interfere with RCW 36.70A.070 (1), (2), and (12).
- 10 W. Futurewise has not carried its burden of proof in regard to park facilities in the
- 11 Carlsborg UGA.
- 12 X. The Board finds that the County's CFP for police services does not comply with
- 13 RCW 36.70A.070(3)(b)-(d).
- 14 Y. Futurewise has not carried its burden of proof in regard to stormwater facilities in the
- 15 Carlsborg UGA.
- 16
- 17 Z. The Board finds that the Carlsborg CFP for police services in the does not comply
- 18 with RCW 36.70A.070(3)(b)-(d).
- 19 AA. Futurewise's challenge to CCC 31.02.275 fails due to its reliance on argument that
- 20 this section is in violation of RCW 36.70A.367, an allegation made for the first time in
- 21 the Prehearing Briefing with no reference within the Petition for Review.
- 22
- 23 BB. Except as applied to Blyn, the provisions of CCC 31.03.270 regarding the Rural
- 24 Center zone comply with the GMA. As to Blyn, it has not been designated as a UGA
- 25 or a LAMIRD and therefore the allowance of urban uses or more intense rural uses in
- 26 this area is clearly erroneous pursuant to RCW 36.70A.110(1), RCW
- 27 36.70A.070(5)(d), and RCW 36.70A.020(1) and (2).
- 28
- 29 CC. The risk of urban levels of development vesting in Blyn during remand would
- 30 substantially interfere with RCW 36.70A.020(1).
- 31
- 32 DD. Futurewise has abandoned its claim with regard to CCC 31.03.290.
- EE. The Board could not reach agreement as to the resolution of the issue of whether
- the County's Urban Growth Areas are too large given the population allocation

1 chosen by the county from the most recent ten-year population forecasts by the
2 Office of Financial Management (OFM). Therefore, the County's existing UGA
3 boundaries maintain their presumption of validity.

4 FF. The Board could not reach agreement as to its authority to address an unamended
5 portion of the County's ADU regulations. Therefore, the County's ADU ordinance
6 maintains its presumption of validity.
7

8 GG. Any Conclusion of Law later determined to be a Finding of Fact is adopted as such.

9
10 **IX. ORDER**

11 Based on the foregoing, the County is ordered to bring its Comprehensive Plan and
12 development regulations into compliance with the Growth Management Act pursuant to this
13 decision within 180 days. Compliance shall be due no later than October 23, 2008. Based
14 on the foregoing, the County is ordered to bring its Comprehensive Plan and development
15 regulations into compliance with the Growth Management Act pursuant to this decision
16 within 180 days. Compliance shall be due no later than October 23, 2008. The following
17 schedule for compliance, briefing and hearing shall apply:
18

19

Item	Date Due
Compliance Due on identified areas of noncompliance	October 23, 2008
Compliance Report and Index to Compliance Record	October 30, 2008
Objections to a Finding of Compliance	November 3, 2008
Response to Objections	November 17, 2008
Compliance Hearing	December 1, 2008

20
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25

26 DATED this 23rd day of April, 2008.

27
28 _____
James McNamara, Board Member

29
30 _____
Holly Gadbow, Board Member

31
32 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

1 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the
2 mailing of this Order to file a petition for reconsideration. Petitions for
3 reconsideration shall follow the format set out in WAC 242-02-832. The original and
4 three copies of the petition for reconsideration, together with any argument in
5 support thereof, should be filed by mailing, faxing or delivering the document directly
6 to the Board, with a copy to all other parties of record and their representatives.
7 Filing means actual receipt of the document at the Board office. RCW 34.05.010(6),
8 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for
9 filing a petition for judicial review.

10 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
11 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
12 judicial review may be instituted by filing a petition in superior court according to the
13 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
14 Enforcement. The petition for judicial review of this Order shall be filed with the
15 appropriate court and served on the Board, the Office of the Attorney General, and all
16 parties within thirty days after service of the final order, as provided in RCW
17 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
18 but service on the Board means actual receipt of the document at the Board office
19 within thirty days after service of the final order.

20 **Service.** This Order was served on you the day it was deposited in the United States
21 mail. RCW 34.05.010(19)

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